

THE SOLLICITOR.

Exactly and plainly declaring,
Both as to KNOWLEDGE
and PRACTICE, how such an
Undertaker ought to be qualified.

As also,
His Parts, Qualities, and fitting
Endowments for such a weighty Em-
ployment.

In a more special manner then hath ever
been heretofore published by any hand
whatsoever.

Shewing further the particular
Of Suing a person Priviledged ;
And how the same may by course of
Court sue any Forrainer.

Being truly usefull for all sorts of persons who
have any important Business in Law or Equity.

By T. M. Esq; twelve years a Practitioner, and
now of the Middle-Temple London.

The Second Edition Corrected.

Hor. ———— *Si quid novisti rectius istis
Candidus imperti ; si non, his utere mecum.*

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By Thomas Manley.

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Rec. July 18, 1906



To the Honourable

S^r HENEAGE FINCH,

Knight and Baronet,

His Majestie's Sollicitor-Generall.



Mong the severall varieties produced by this Age, wherein almost every man endeavoureth in his own way the management of his particular Affair, I come, *Athenian-like*, with an *Aliquid Novi* (as I suppose) in my hand. I cannot be so vain to imagine that there is any Circle, Star, or Meteor in the Sphere of the Law, but what you are exquisitely able to make the world know, you can

The Epistle Dedicatory.

take the height of, and to discover its proper or Excentrical Motion. To the candor therefore of so great and learned a Judgment, I could not but offer this small Essay: which though in it self not able to draw aside your eye to glance on it, yet happily to the generality it may prove in some measure helpful and advantagious. And though the meanness of the gift may not merit your acceptance, yet your goodness I hope will over-balance the same; and thereby give encouragement to him who desires to approve himself,

S I R,

Mid. Temp.

An Honourer of your

Nov. 20.

1662.

Name and Vertues,

T. M.

TO



TO the READER.

THe desire of the publick benefit will no doubt so readily appear in the very Frontispiece, that it will save an unnecessary labour of boasting of this endeavour, or complementing your acceptance. Things of this nature affect not any dress or preparatory shews, as not beholding to any Ornament for the commendation of their use, which answers the accessional Fancies of Language. Practice and the plodding head is the subject of this Treatise; to which Fancy, and other polite Curiosities, are very incompetent Auxiliaries: yet will you find a tincture and accost of such pleasing delight, even in the short turns and inobservant Dispatches of this our Sollicitor, which may tell you the Book was painfully laboured to accommodate it self to his most express Character. All I shall add is this, That it may be

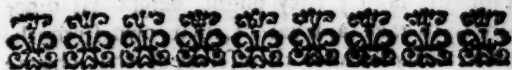
To the Reader.

confidently presumed, that the frequent abuses and miscarriages in this Employment will both be rectified, wilfull Delinquents terrified, the Client certified, and such an unerring Reputation obtained, that the Law shall recover and maintain its honour free from the affronts and injuries of ignorance and impudence; Justice will be triumphant; and the Client find the benefit of them both, with ease, assurance and expedition.

Vale.

By some inadvertency of the Press, the manner and method of suing any Courtier, or other protected person, having been omitted; it is added at the end, by way of Appendix.

THE



The Compleat

SOLLICITOR.

CHAP. I.

*Of the Carriage and Demeanour of a
Sollicitor.*

MAN is not born to live with his arms across; but rather, as one of the most necessary members of this beautionous Frame of the world, he must conferr and contribute his whole travel and pain, to the conduction and conservation of that civil society in which he is placd; not only to the good of himself, but of others also. But because that in the choice which men make of a Calling, their happiness in the managery thereof doth depend; and that nothing so much avails to the leading a contented life, as when they find themselves

A. 4.

fit

fit for the same; they ought before all other things, to take a tryal of their own strength, and seriously bethink themselves of that charge they are about to embrace; because usually we presume too much upon our own strength, and attempt more then our ability is fit to archieve: and this errour we see is incident almost to all our actions. Hence it is, That some will spend more then their estates may well bear; others, in labouring and toyling, go beyond their abilities: some are not masters of their passions; others there are, that in dalliance and sporting, waste their time: and another sort there are, who are so vehemently Satyrical, that they will not spare any person, no not the Prince, although thereby they incurt the hazard and penalty of loosing their heads. Some are unapt to manage publick affairs, as being of a sullen and solitary humour, or of a slack and slow disposition; and others as unfit for all employment, as any of the aforementioned, for that they be either obstinate in opinion, or discourteous and boorish in their behaviour and carriage. And that which maketh us to fall into these faults, is, for that we do not thoroughly see and look into our Selves. Whence it cometh to pass, That thus neglecting to take a true tryal of our own towardness and strength; we do often undertake business of such gravity and weight, as that afterwards we must either abandon them with igno-

ignorance and shame, or else to go on with them; we must needs suffer much grief, pain and displeasure.

Now that a man may the more warily weigh an affair before he put his hand to the plough, (as we say) or his back to the burthen, let him remember, hat the Bearer must always have more pich then the Burthen: for if it be too great or too heavy, who seeth not but that the Undertaker shall be constrained either to leave it, or else to sink and fall under it, ere it be long? It behooveth us also to consider, That there are divers kinds of affairs; some whereof are hard, uneasy and difficult; not so much, for that they be weighty and important of themselves, as for that they be matched and mingled with a multitude of other toylsome and troublesome busineses which continually attend and wait upon them. I speak not this to dismay, or so to discourage any man, as to make him decline and eschew the undertaking of necessary and needful Employments, (such as is this of our Solicitor) because of the many Encumbrances and Cares wherewith they may be accompanied; so that not daring to intermedle with any matter of moment, he should abide without business: But this is my whole intent and meaning, that seeing a mans life is naturally subj. Et to pains, troubles and cares; it behooveth a man so wisely and warily to demean himself, that if it be his

fortune to undertake the managing of any businesses, he neither be so feeble-hearted as to shun or relinquish them for their difficulty; nor yet so fool-hardy as to undertake such affairs as go beyond the reach of his ability. It behooveth therefore diligently to consider every undertaking; for, for want thereof, many have fallen into such kind of Employments, as have been painful for them to bear, and yet more uneasy to be abandoned: which being a case of so great difficulty, doth require both much prudence and patience; the two only proper remedies to lighten and ease an evil: with which two virtues, our Solicitor ought in an especial manner to be indued, as being to encounter a hard and difficult study, to gain the Knowledge of the Law in some reasonable measure, before he can, or rather ought, to be admitted to the practick part; which as it hath in it something of gain and profit, so hath it also its extraordinary toyle and labour; which, its true, at the first seemeth very irksome and tedious; but, by continual usage, becomes even as a natural habit. Just like poor Prisoners, who suffer with great pains and torment at first the weight of the fetters that are put upon their legs; but after they are once accustomed thereto, necessity teacheth them, by the constant wearing thereof, not to think the same so burdensome. By which it appears, there is no manner of life, how strict, hard, and labo-

laborious soever it be, which hath not some kind of sollace and refreshment, one or other, to sweeten the same. And truly there is not any one thing wherein Nature hath so much favoured mankind, as this, That she maketh us find the remedy and mitigations of our misfortunes, cares, toyle and labour, even in the very sufferance and undergoing of the same.

The case then so standing, as it doth, that man is born obnoxious and subject unto all manner of miseries, and that his whole life is nothing but a servitude, wherein every one ought to take good heed how to demean himself in his Calling, and how he may content himself therein, winking at that which is evil in it, and applying himself to that which is good: for there is no Calling (as I said before) howsoever painful and toylsome it be, wherein the patient soul doth not find some contentment and gain; though that cunning and skill be more exquisite in time of Adversity, than of Prosperity: for when as difficulties do present themselves, then must we gather all the forces of our wits together, and set our whole vigour and vertue against such eminent and present evils.

Moreover, Envy and Ambition are the two Cankers that corrupt all that are once tainted therewith, and blear the eyes, so that they cannot see to perform their duty aright, and as they ought to do. And therefore our Solicitor

must

must not bear envy against such as are in higher place than himself, but ought to content himself in his proper station. For it is a main step to attain both Practice, Love and Preferment, when he does prudently and discreetly carry himself in that Estate and Calling which he hath made choice of, taking patiently the evils that fall out therein, and endeavouring to redress such Accidents as cross his desires. And for this cause *Plato* did compare the Life of man to the play at Dice, whereat whosoever doth play, ought alwayes to strive to have a fair throw, and yet should content himself with any Cast that cometh. The want of this satisfaction, maketh men of weak wit, upon the fortunate success of any businessse, so to be elated and transported, that they scarcely know they do; they grow so insolent, that no man can keep them company; they can abide no body, and no body can abide them: but if either by neglect, want of management, disfavour, or ill fortune, they are crossed in their designs, (though never so contrary to Reason) they are so enraged or amazed, that you shall see them like unto one sick of a long and languishing disease, which can neither abide heat nor cold.

The Philosopher *Theodorus* was wont to say, That he gave his Scholars instructions and lessons with the right hand, but that they

recei-

received them with the left. And so doth it fare oftentimes with not a few, who with the left hand take hold of that luck; which Providence reacheth to them with the right. It were much better, in my judgment, discretely to imitate the wise diligence of the Bees; which of Thyme, that is but a dry and harsh herb, extract and confect sweet and pleasant honey: so should every man in his station, out of the troubles and sollicitudes of his life, draw whatever is good therein; and in the mean time, chase away what is evil, or so ease and over it, that it may not be discerned. And who knoweth not, but that such as exercise themselves in the actions of vertue, can by a secret and supernatural kind of Alchymy, draw good out of evil? Diogenes was banished; but he made good use of his banishment, in that he did in the mean time betake himself unto the study of Wisdom. And this shall not be so difficult and hard to do, as it seemeth to be, if by frequent exercise he do endeavour to acquire the habitude and settled custome of living content in his condition. Can ye not abide in the houses of Princes or great men? Content you then with your own. Do ye find your self incapable to govern, or fit at the Helm in the Commonwealth? Play then the good Citizens part, and be content to obey: for it is expedient

pedient, that he that will undertake to be a Solicitor in every way compleat, must hold and keep a certain stayd and settled manner of living, and must not vary and change with every winde. Ye may see many, much subject to this Vice (for so I must call it) of changing their manner of living from day to day, so that they cannot ground or settle themselves upon any thing whatsoever. They appear like *Proteus*, never long in a shape: *modo Causidicum, modo Rhetora*, as the Poet speaks; wherein they resemble such as have never been accustomed to the Sea, who as soon as they begin to sayl, run out of one Vessel into another, leaving the bigger to put themselves into a lesser, and by leaving the lesser to return to the bigger again. And thus they continue in changing, untill what time they know clearly that nothing can fit them, because that whithersoever they go, their queazy stomachs do still keep them company, and consequently their vomiting-disease.

Likewise those that bring their passions with them unto their affairs, do seek incessantly after a new manner of living, and never accomplish what they have once begun. All things go against their stomachs, all things displease them; whether to be idle, or to be employed; to serve, or to command; to be married, or to be single; to have children, or to have none

at all : finally, nothing doth fit their fancy, nothing doth satisfy their desire, save only that which they have not : and such me-thinks must needs live miserably and restlessly, as Prisoners fettered in perpetual pain.

There is likewise another manner of men not much unlike the former, that cannot keep themselves quiet, nor be at any settlement, in any time, or in any place. They cease not to go and to come; alwayes intermeddling with affairs, without being thereunto called; and busying and bestirring themselves about that which in no wise concerneth them. These men, when they go out of doors, they run along the streets; they haunt the publick places, and then they return home full of vexation and weariness, without any designe: for there is nothing that doth so much irk and weary mens minds, as to labour in vain. They are like unto the little Ants, which do creep upwards upon Trees; and after they have mounted up to the top, have but the pains to creep down again the same way that they went up, without bringing down with them any good at all. Many live in this manner, whose life is nothing else but a boyling leisure, full of tumults and toyls. Ye shall see them posting on with such vehemency and speed, as if they would carry away with them all that they find before them. The publick places, the Churches and Mar-
kets,

kers, are ordinarily full of such Folks. These
 be they which forge and frame News at
 pleasure: They will be scanners of all mens
 worths, and the givers of Garlands: They
 will talk lavishly of other mens lives, and
 discourse of other mens offices. But the
 actions of a well-advised man, (such as a com-
 plet Sollicitor ought to be) tend alwayes to
 some certain end; neither doth he burthen
 himself with more busineses then he can with
 conveniency turn his hand to, and put in exe-
 cution: according to that of Cicero, *Omnis Cog-
 itatio motusq; animi aut in consiliis capiendis di-
 rebus honestis, & pertinentibus ad bene beateq;
 vivendum; aut in studiis scientiæ cognitionisq;
 versabitur: Omnes enim trahimur & ducimur
 ad cognitionis scientiæ cupiditatem: in qua ex-
 cellere pulchrum putamus; tibi autem, & errare,
 nescire, decipi, & malum & turpe ducimus.*
 That is: "Every thought and motion of the
 "mind ought to be employed either in con-
 "sulting of honest things, and such as may lead
 "to a good and happy life; or in the study of
 "Arts and Sciences, and the way to gain
 "knowledge: for we are all drawn, or, as it
 "were, led by the hand to a desire of getting
 "knowledge, and bettering our understanding:
 "wherein to excel, is accounted an excellent
 "thing; but to stray, deviate, be ignorant,
 "and easie to be deceived, not only by others,
 "but

“but also by our selves, is counted a great gain
“to reputation.

CHAP. II.

*Of the Qualities wherewith a Solicitor ought to
be endowed, to make him compleat.*

THe former Chapter having treated in ge-
neral of the necessity of knowledge to be
sought and acquired by all men, we shall in
this now descend to particularize the qualities
wherewith every one ought to be endued, that in-
tends to take on him the business of Solicitation.
To which purpose, we shall observe five things :

First, He ought to have a good natural wit.

Secondly, That wit must be refined by edu-
cation.

Thirdly, That education must be perfected
by learning and experience.

Fourthly, And last, Learning should too much
elate him, it must be balanced by discretion. And,

Fifthly, To manifest all those former parts ;
it is requisite, that he have a voluble and free
tongue to utter and declare his conceits.

First, He ought to have a good natural wit,
not too slow nor too quick. Not too slow : for
men of slow capacity are for such weighty under-
takings altogether unfit ; their conceit being
so

so tough, that neither the Rules of Learning, nor Precepts of Wisdom, nor habit of Virtue, can make any Impression. *Tardis mentibus virtus non committitur*, saith Cicero; for their dullness is an enemy to Wisdom, and their slowness hurtful to the moments of occasion.

Some I have heard of, I confess, That in their choice of one to manage their affairs, have elected a man of this disposition; surely *contemptu magis quam gratia*: for I see no ground to allow their Opinion; since those ought to be preferred who are good, and know why they are so; whereas these simple wits are easily both altered and deceived.

And as they should not herein be too slow, so neither should their wit be too pregnant and sharp, lest it become like a Razor, whose edge the keener it is, the sooner it is rebaed; or like soft wood, which is ready to receive the impress of the Limner; but in regard of its warping, is unable to keep it, and therefore is not fit for any worthy Portraiture. Men of this disposition are of a more quick than sound conceipt, in all their actions unstayed and fickle: one while embracing an Opinion, as seeming the best; then again looking more nearly, and not able to answer the doubts which are ready to enter an open invention, fall to a strange kind of uncertainty. In their negotiating of business, they decree that of other mens proceedings, which
in

in their own case they would do : and in this security are oftentimes so over-reached by their Adversary, that they cannot return without great disadvantage and loss. Commonly they follow rather subtle than wise counsels ; which, for the most part do not speed, being only *prima specie lata*, thing of appearance, and no substance, *tractu dura* : for by how much the subtilty is greater, by so much it is necessary that the handling be very curious and exact, else they sort to no end ; being like a Clock, which most artificially composed, is soonest disordered, and put out of frame : and then they are *Eventu tristia* ; so odious and unfavoured, that they are alwayes waited on by a sinister success. And therefore wit may in this case be said to resemble the Sun, which so long as his beams wander abroad, and disperse according to their natural liberty, doth gently warm and cheer the earth ; but when they are by a violent reduction contracted and drawn together in the hollow of a burning-glass, consumeth what only should be refreshed. In brieft, then such should and must be the wit that is fit to negotiate affairs, whose over-pregnancy must be tempered with a measure of solidity ; by which means becoming *actu otiosis simillimi*, they dispatch their business with much moderation. And with such a wit our Solicitor being endued, will even in the execution perceive, and upon present occasion determine
and

and take counsel, as Fencers do in the Lists, whom the countenance of the Adversary, the bending of his Body, and the moving of his hands, doth admonish how to proportion the distance, how to offend where is least ward, and how to defend where there is likely to be made the strongest assault.

I. But it is not enough for our Solicitor to have such a wit, unless the same be further refined by education. Now education (as the Philosopher speaks) is a good and continual training of the mind: this being indeed the principal foundation of all humane happiness, and as this is the formal cause of our life; so the efficient both of a clear Understanding, and so consequently of a good life; without which, men are burdens and eye-sores to the Commonwealth; nothing but a cypher----- *Et fruges consumere nati.* Now Education may be achieved as well by association as instruction: for good Company is like a wholesome Air; a man may profit much even by the changeable interview of a good man. This is a thing of a very great consequence in young minds, according to that of the Poet, *Quo semel est imbuta recens servabit odorem—Testa diu*— They are apt to be seasoned either with good or bad Resolutions, and to receive the impress of any custom, which their first company shall by the silent persuasions of their actions impose upon them. So then, though company is a
great

great matter, and will prevail much; yet evil customes may be deleted, at least altered or amended by inculcation; which must not be done with terms of affected incignation, but in a more moderate way, mixing reprehensions with fair perswasions, and laying before the eyes of their Understanding the generous Examples of several persons: so by recording tractable and officious dutifulness, to enflame them to imitate and surpass them.

3. Having thus both by Precept and Example received the benefit of Education towards the refining of his natural wit; it is in the next place necessary, that our Solicitor should be perfected by Learning. Now, although Learning have a private and pleasing end in it self, as being the harbour where the free and untroubled Consideration hath a delightful repose from the Sea of more unquiet thoughts; yet it is but a serving-quality, preparing the mind to a nobler end of well-doing: for Knowledge or Learning teacheth not her own use, but as a necessary mean enablieth us to good actions: and it ought to be measured by Vertue; and if loved for any thing, it must be because it informeth us to do vertuously. It is an excellent Commendation that *Pliny* giveth to *Trajan*, *Præstas quæcunq; tibi præcipiunt, tantumq; eas literas diligis, quantum ab illis probaris.* We must use the Precepts of Learning as the Laws of our behaviour; we must remember, that

that the glory and encrease of Knowledge consists in the exercising of Goodness; and the masculine and active power of the mind must be joyned thereto, to make us perform good and great things. But as it is to be followed, so it is not to embraced with too vehement fervency: but let that saying of *Cato* be remembred, "That active
 " minds cannot be with a more honest idleness,
 " than the study of Letters, corrupted; nor idleness by any greater or more dangerous policy
 " find easie entertainment in a well-governed
 " Commonweal.

This Learning will at length teach to lay hold on another most excellent branch of herself, which is, Experience: and indeed it is the most entire part of Learning, without which, the most absolute Schollars and learnedest men cannot attain to any degree of perfection in civil actions. For there is more of certainty in the Principles of Practice, then in the most necessary Demonstrations or clearest discourses of Reason. And these men that are intendants, (as our Solicitor ought to be) and practized in the Occurrences of Courts, are fitter for any active employment, and can with better easiness dispatch any business: *Quoniam enim habent oculum ab ipsa experientia, vident ipsum principium.* These become as it were Trusty Oracles, on whose judgment a man may safely repose his whole fortunes: they are on earth, *instar presciorum numinum*

minimum; whose advice a man ought to take, before he engage himself in any action.

For the mean by which Wisdom enableth to foresee a success, and accordingly, after due Consideration, rule the present, is Conjecture; which by comparing things passed, presupposeth out of the same causes the same effects. Now in this obscure and incertain deliberation upon the future, our Solicitor being experienced, is like him, who having tryed a dangerous passage in his own person, and noted the by-turnings which might divert him into an Errour, can in the darkest night, with a secure and forward alacrity, go the same; and overcoming all difficulties, arrive at the appointed place: whereas another, though furnished with the soundest directions, (yet never having proved it) quaketh at every shadow; and having his spirits shut up in amazement, plainly hazardeth his person. Now the Rules to perfect this Experience in our Solicitor, are, to frequent the Courts of Justice, as Free-Schools of civil Learning; to endeavour to understand all Occurrences therein; to confer thereof with men expert, real, of a deep insight, such as are not carried away with apparences, but *can spy day at a little hole*, (as the Proverb speaks) and make judgment out of matters themselves, and discern between truth, and truth's likeness, and know when covert designs are the foys of more eminent intentions.

4. And

4. And now our Solicitor being thus forward toward perfection, lest he should be too much elated and puffed up, all those his foregoing parts must be ballanced and kept even, by the unbyassed Rules of a sound Judgment and solid Discretion, which should be the balance in which he should weigh all his actions.

The first part hereof is Deliberation; in which he must neither resolve with haste nor affection: the one not giving time enough to discuss those things which ought to be considered; the other so occupying the mind, that no thought can creep in, which doth not in all regards conform it self to give sufferance to that passion. He must promise himself nothing, before his Conceptions are by great presumptions assured of successe: for the fervency of hope maketh men somewhat more retchlessly negligent; insomuch that when they are disappointed, they are as impatiently grieved, as if they had fallen from an essential felicity. Like Novice-MERCHANTS, who fore-counting great gains, and failing of their fresh expectation, are suddenly embarked in that irrecoverable mischief of Debt.

Another point of discretion which he ought to make use of, is, *Principiis obstare*, to provide at the beginning, and not linger till he be surprized both in his business and judgment; And what he cannot compass at the first, it is best by

by timing and waiting to expect an opportunity : for often, things by time receive contrary revolutions, and conclude clean different from their apparence and likelihood. And although he may sometimes wait long, yet he must continue in Action, and managing of the matter : so may new busineses arise out of the former, both by reason of the coherency and way that opens one to another. Herein must be observed that of Cicero ; he must *non solum animis, sed etiam oculis servire civium* : he must not think himself discharged, except he accompany his actions with fair likelihoods. This, if it be not affected, sets a splendour, and gives a grace to our actions ; teaching us to put a difference in persons, and with divers natures to treat diversly, applying to every mans humour.

Some men are so incapable, that they make small things great, easy busineses impossible, and enterprize nothing, which through their perverseness, is not with difficulty accomplished ; whose folly a man may compare to the unskillfulness of some Chirurgions, who in stead of healing, fester a wound ; and in stead of mitigation, make the torments more grievously dangerous : whereas expert ones do with gentle Lenitives redress the malady, before the Patient have any thorow sense or feeling of pain. So our Solicitor being thus guided by discretion, and having his spirit awaked to all circumstances, doth

B

manage

manage matters with a more delicate deportment; and by certain premised Preparatives, so disposeth the mind of the other Agent, as it may be apt to receive any form which shall be imposed; using the same Consideration which good Players at Tennis have, who, not to suffer a rest, do not only stand attentive to send it to their Companion, but with like heed provide to retake it, by accommodating their person, and expecting it in the likeliest place: so he, to avoid all hinderances, doth not only suit his own words, but also gives favourable Constructions to the speeches of the other Agent, by dissembling the discontentments which might arise. In brief, some few other Rules for our Solicitor's discretion, may be these: He must avoid sudden changes, for that doth hold of violence; and, *Nullum violentum est diuturnum*. Again, he must settle more assurance in him that doth expect, than in him who hath received, a benefit; for by speeding in suits, men become slack waiters; when hope of gaining will certainly keep them in due devotion. He must also be wisely diffident, and put on a judicial distrust: put on, I say, because there is nothing less familiar and easy to honest men, than to suspect warily.

Having thus far trained him up in the way to perfection, and laid him down some few Rules to walk by, come we now in the last place to shew how,

5. He shall manifest the same, and com-
 ment on his actions. To which purpose it is
 necessary that he have a free and voluble
 tongue to utter and declare his conceits; in
 the use whereof, it is necessary that he avoid
 affectation, and that his speech be honest, com-
 ly, significant, expressive, proper, and void of
 all fear and effeminate terms, without any dis-
 simulation: for, doubtfull and ambiguous
 words, with particular reserves, argues a base
 mind, and imbecillity of spirit. He must not
 alwayes shew himself a Scholer, but sparing-
 ly, and when fit occasion requires: for
 sometimes to use conceits of Learning as Em-
 broideries, is requisite; but then it should be
 in an hidden manner, like as Apparel doth re-
 present the proportion, but not the barrenness
 of our members; but generally, it is the grea-
 test wisdom rather to attend others, then to
 be an eloquent Merchant of self-conceits: for
 men expert and practised, can out of another
 mans words deduce great consequences, and
 take light of matters of great importance.

With these five Qualities so rectified as a-
 foresaid, our Solicitor being rightly adorned,
 he shall be able with credit to run through all
 the hazards and difficulties which in his pra-
 ctice he shall or may meet with.

Object. But here I meet with an *Objection*, viz. *What need is there of all this coyle and ado about a Solicitor?* Do not all men know, there are many Solicitors who have much practice and great dealing, that have never been bred to any of those things? simple fellows, who had not wit or honesty enough to learn a mean Trade, and in truth cannot write their own names, and yet are accounted brave fellows in that business?

Ans. To this I answer: True it is, and to the shame both of the Law and the Professors thereof be it spoken, that will suffer such fellows by their ignorance and deceits to abuse so many as they daily do. 'Tis by the means of these cheating devouring Caterpillers, that the honourable Professors of the Law are so often cryed out upon for bribing and taking excessive Fees; and it will be no wonder hereafter if Ignorance be revived, when such a company of simple Soes shall be admitted or suffered to usurp (and therein abuse and make vile) the worthy name of a Lawyer. It is an abuse well worthy to be inspected by the discerning eyes of the learned Judges of the Land, and some severe course to be taken for the remedy thereof; whereof, under favour and permission, I shall make bold only of one small hint, as follows.

Whereas now every idle fellow, whose prodigality

digality and ill husbandry hath forced him out of his trade or employment, takes upon him to be a Solicitor; and thereby not only by their multitudes and swarming in every corner, they who have been at great labour, expence and study, either can have no practice at all, or at best so little that it is not worthy their looking after; and not only so, but the Clyent also receives a double damage; first, in the tedious delay, and sometimes the loss of his cause; and then in the vast expence of his money, whereof he can have no account: for remedy whereof, it would be well that it should be declared, That no man should dare to undertake to be a Solicitor, either at Common Law or in Equity, unless he had for five years before at least been of some of the Inns of Court, or Inns of Chancery, and shall be legally admitted and entered in a Roll for that purpose, to be kept in the Pettybag-Office in Chancery, under a certain pain and punishment; and that no Clyent do entertain any other than one so qualified; by which means, if any abuse be offered, the Court may take a Cognizance thereof, and punish the same. This shall suffice to have spoken in answer to that Objection: I shall now proceed, and shew the duty of our Solicitor, both in what he ought to do, and what he ought to know.

know. But for that, I shall refer you to the next and following Chapters.

CHAP. III.

what our Solicitor ought to know, the better to enable him in his practice.

AS we suppose our Solicitor to be chiefly, if not wholly concerned in matters of Equity; so we shall to that purpose inform him, that he must of necessity be knowing in Courts of Equity: whereof the Chancery in this Kingdome being indeed the chief and only lawfull Court, if so be that he be truly instructed therein, it will be sufficient to guide him in all the rest. Therefore

In this Court the Lord Chancellor of England is the chief Judge; who in case of sickness, infirmity, or other extraordinary business, may depute one of the Judges to sit in his place at any time: but in the Terms, the Master of the Rolls is equall with him, and sitteth at *Westminster-Hall* in the mornings; and three dayes in every week, during the continuance

tinuance of the Terms, sitteth alone, assisted by two Masters of the Chancery, in the Chapel of the Rolls: and these in their several places, in manner aforesaid, do make Orders and Decrees.

The subordinate Officers of this Court are many.

The twelve Masters in ordinary, which are Assistants both to the Lord Chancellor and Master of the Rolls, as aforesaid, and sit with them; and to whom References are made, and before whom Deeds and Recognizances are acknowledged, and Affidavits made. This formerly might have been done before any Master at his own house, by the option of the party concerned: but now, by an Act of Parliament made in the thirteenth year of King *Charles the Second's* Reign, there is a general Office erected for the said Masters, wherein there are at certain hours every day, at least two Masters attending to dispatch the said business; which may not be done otherwise, or other-where, but by special Order.

The Register of the Court, who hath divers under him that sit in Court, and take notice of all Orders and Decrees made in Court, either before the Chancellor or Master of the Rolls; and accordingly afterwards, at the re-

quest of the party concerned, or his Solicitor, draw up those Orders and Decrees which are afterwards to be entred in the said Office, in a Book of Entries to that purpose kept; and being so entred, they must be returned to the Register; who having set his hand thereto, the same thenceforth are authentick, and may not be alkered without especial order from the Court. In this Office also are filed all Reports from the Masters, and all exceptions taken to any of the same Reports.

The six Clerks, in whose Office all proceedings upon Bill and Answer, unto the very Decree, yea, and after Decree, are acted; and from whom likewise issue some Patents, as for pardon of a man for Chance-medly, Patents for Embassadors, Commissions for Bankrupts: and these are done by their sitting Clerks, of which each Six-Clerk keeps a set number.

The Cursitors of the Court, who were incorporated, by Queen *Elizabeth*, by the name of the Twenty four Cursitors; amongst whom all the business that lyes in the severall Shires is severally distributed. These make all Original Writs in the Chancery, which are returnable in the Common Pleas; and all Writs of Entry, and Covenants.

The Masters of the *Subpoena*-Office, the Clerk

Clerk of the Affidavits, where all Affidavits are to be filed which you would use in Court. Heretofore they used them in Court, and after filed them; but now they must be first filed, and a Copy thereof taken to be read in Court, or else they signify nothing.

The Clerks of the Petty-bag, who have many Clerks under them; and these Clerks have much variety of business that comes through their hands, and requires very much knowledge and experience for the managing thereof: for this Office hath the making out of all Writs of Summons to the Parliament. To this Office are all Offices that are found *post mortem*, brought to be filed. In this Office are all Pleadings of the Chancery concerning the validity of any Patent, or other thing whatsoever that passeth the Great Seal. And these Pleadings are all in Latine, although most of the rest of their Proceeds were in English. If any question arise about the acknowledgment of any private Deed between Subjects, which is acknowledged in Chancery before the Lord Chancellor or Master of the Rolls, or any of the Masters in Chancery; and all Statutes and Recognizances taken before any Officers to that purpose deputed, are transmitted hither, and here prosecuted. Here also are all suits for or against any person privileged.

Viledged in the Court. And lastly, It is a hand whereby to transmit divers things from the riding Clerk and the Inrolment-Office, to the Chappel of the Rolls.

The Examiners are Officers of this Court, who take the Depositions of Witnesses, and are to examine them, and to make out Copies of the Depositions.

There are likewise Clerks of the Rolls, who sit constantly in the Rolls to make searches for Deeds, Offices, &c. and to make out Copies thereof.

The Ushers of the Court hath the receiving and custody of all monies ordered to be deposited in Court, and makeeth Certificates thereof, and payeth the same back again by order of the Court, and no otherwise.

The Serjeant at Arms, who carrieth the Mace before the Lord Chancellor; to him all persons, standing in high contempt, are brought up by his Substitutes as prisoners.

The Warden of the Fleet likewise is bound to attend this Court, to receive such prisoners as stand committed by the Court to him.

The Court consists of a double power, ordinary and extraordinary: the ordinary power is (as in the cases of *Scire facias*) to repeal Patents in case of Traverse, Endowment of a Woman,

Woman, and the like : and herein the Court is limited and confined to the Rules used in Common Law. The other is extraordinary and unlimited, (as in cases of Equity) wherein relief is to be had by a Suit here by way of Bill and Answer.

By the power of this Court are issued forth Commissions for charitable Uses, Bankrupts and Sewers. In some cases Commissions have been here granted to examine Wastes, to set out meet wayes for Passages, to prove a Childe legitimate, to prove Customes, and to examine Witnesses *in perpetuum rei memoriam*.

It proceeds by way of Bill and Answer, and gives relief in many cases besides, and beyond the Rules of the Common Law : whereof practice will shew many experiments.

And to this purpose, it is necessary for our Solicitor to read *Tothills* and *Caryes Reports*.

CHAP.

CHAP. IV.

Of the whole duty of our Solicitor in his Practice.

HAVING in the former Chapter gone through the most necessary things which our Solicitor ought to know barely; it remains now, we should come to the practick part of it; wherein we shall set down plain and easy Directions for the greatest part of their manner of proceedings; wherein, for methods sake, we will begin with their first Process, called a *Subpœna*.

This Writ of *Subpœna* is the leading Process of this Court, as to the procedure, by Bill and Answer; and is a close Writ, and doth require the Defendants appearance in Court at a certain day, and under a certain pain therein limited, to make answer to the complaint of the Plaintiff, which is indeed the Bill: which in former times was wont to be put in, before the *Subpœna* sued forth; but now of long time hath been otherwise used. This first *Subpœna* is called *Subpœna ad respondendum*; and is distinguished by that name,

name, because there are several other *Subpœna*'s in order to further proceeding; as, a *Subpœna* for Costs, a *Subpœna* to make a better answer, a *Subpœna* to rejoyne, a *Subpœna* for Witnesses to testify, a *Subpœna* to hear Judgment, and a *Subpœna ducens tecum*, for Writings, Evidences, &c. Touching the *Subpœna* to answer, you must be very careful that there be no mistake in the body of the Writ; for that may prejudice the Plaintiff; and the Defendant may take advantage thereof, if he find it: but if there be a mistake only in the Label, no advantage can be taken by it. In none of these Writs may there at any time be put more then three names.

This Writ may be returnable two ways: either upon the common dayes of Return, as *die Jovis proxime post tres Michaelis*; or else upon any day certain, which now is the most usual course. And it is to be served before the Return thereof be past: and this is to be done either by the delivery of the Writ it self under Seal to the Defendant in person, or by shewing to him the Writ under Seal, delivering him a Note or Label of the day of his appearance. And this last course is most usual, because oftentimes there are more persons than one in the *Subpœna*, and then the body of the Writ is reserved to be left with the last.

last. Neither indeed is it at all required to serve this Writ personally: for it hath often been declared a good Service, when the Writ or Label thereof hath only been left at the Defendants Dwelling-house, with some relating to him, and Affidavit thereof made; otherwise, no contempt can be grounded thereon. And where a Defendant doth hide himself, or refuse to be spoken with, it hath been allowed to be good service, to leave the Writ hanging upon the door of the House, or to put it into the house under the door, or in at the window of the house of his usual Residence. Also it is taken for a good service, although it be served on the same day, it is returnable, if it be served before Noon of that day, or before the rising of the Court. Where a *Subpoena* is had against Husband and Wife, and the husband alone is served, and hath notice, that it is against him and his wife; this is a good service to both: and for want of an appearance, an attachment may be had either against the wife only, or both. The *Subpoena* being served as aforesaid, the Bill must be put in, in due time; or else the Defendant will have costs: to prevent which, you must take notice what time is prefixed for the exhibiting the Bill, after the return of the *Subpoena*: which is thus; If the *Subpoena* be returnable upon

upon a general Return-day, as *Crastino Octabis, Tres Mens. &c. post, &c.* then hath the Plaintiff time to put in his Bill untill the second day before Noon next following, being the fourth day following every of the said Returns; and you must account the Return-day, and the fourth day after it, for two of the said four days. But where the *Subpœna* is returnable upon a certain day of the Month, then the Bill must be filed the second day after before Dinner. And if the Bill be not filed, (the *Subpœna* being returnable on a certain day of any moneth) then the Defendants appearance being entred, his Clerk in Court may prefer costs the next day after: and if the Bill come not in the next day after costs so preferred, before Noon, or presently after Dinner, then the Defendant is discharged with such costs as a Master of the Court shall tax him. But where the *Subpœna* is returnable on a Return-day, the next day after the fourth day is costs day: and if the Bill come not in the next after the costs day, as aforesaid, (the costs being preferred the day before) then the Defendant is discharged from attendance, as aforesaid, with his costs.

Where the costs are not voluntarily paid for want of a Bill, by the Plaintiff or his Clerk; to the Defendant or his Clerk; in such case
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the Defendant may have a *Subpœna* for the said costs, which must be personally served on the Plaintiff: and if thereupon the costs be not yet paid, then the Defendant may (upon Affidavit made and filed, that the said *Subpœna* was served) have an Attachment directed to the Sheriff of the County where the Complainant lives, to attach him for the said costs: and if the Sheriff make return, upon the attachment, that the Complainant cannot be found, then a Proclamation may be sued out against him; and that also being returned with a *Non est inventus*, then a Commission of Rebellion may be taken forth.

On the other side, if the Plaintiff do in due time file his Bill, and the Defendant appeareth not the next day after costs day; then the Complainant, upon Oath made, That the Defendant was served with the *Subpœna*, may have an Attachment; and if the Sheriff return *Non est inventus* thereon, he may sue out a Proclamation and Commission of Rebellion in manner aforesaid, successively one after another.

The Affidavit that must be made of the service of the *Subpœna*, must be made according as the manner of the service was: for if the Affidavit made, do not prove a good service, as before is set forth, then no attach-
ment

ment can be had upon it : for there can be no attachment regularly made out against the Defendant for not appearing, untill there be a certain and positive Oath made of the time, place, and manner of serving the *Subpæna*, inserting therein the Return of the Writ.

And where any person served with a *Subpæna* doth injury or wrong, either by word or deed to the party who acted in the service of it, or doth set at nought or contemn the Writ it self, or the Authority of the Court from whence it issues; upon Oath made thereof, and motion thereupon, such person will be committed to the Fleet.

Where there is appearance made by the Defendant within the time limited, and the Bill also filed; in such case, upon a Rule given by the Plaintiffs Clerk to the Defendants Clerk, & the same entered into the Register, the Defendant is to answer to the Bill by the same day seven-night then next to come : which if he fail to do; and do not otherwise in that time satisfy the Court, by shewing sufficient cause of such his delay, then the Complainant's Clerk may make out an Attachment against him.

Now this Writ of Attachment cannot be duly had, unless the *Subpæna* before-going were duly obtained : for if the *Subpæna* be
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counterfeit, or if true, not legally served, the Attachment is irregular; and the Defendant arrested by it, upon disclosing the matter to the Court, will be discharged thereof: whereas an Attachment duly gotten, may not be discharged till the Defendant have first paid 25 s. costs; and every succeeding Process, double so much; and upon account thereof, he is discharged of course.

The Husband appeared, and the Wife not: an Attachment was granted against both. *Ab. lls Case, 19 Eliz. Caryes Rep. 65.*

So he alone appeared, and put in a Demurrer in both their names, without excusing her: Attachment was granted against both. *Spi-cers Case, Caryes Rep. 39.*

The Defendant made Oath, He could not answer without sight of Evidences, and had time given him, and afterwards put in a Demurrer: Attachment went out against him. *Pasch. 21: Eliz. Farmers Case.*

Where the Defendant is served with a *Sub-pena*, and afterwards, for not appearing, an Attachment issues against him, if he do not appear thereon, but suffer a *Non est inventus* to be returned, there will go out Proclamation of Rebellion against him. Yet note, That the Process of Contempt, and all Attachments in Process, are to be discharged upon the
Defen-

Defendants payments of the ordinary costs of the Court to the Plaintiffs Clerk, or his tender thereof to the same, and his refusal to take it, and filing of the Plea, Answer or Demurrer, as the case merits, without any motion: and if the Plaintiff do prosecute the Contempt afterwards, the Defendant will be discharged with costs.

Where an Attachment is had, if the Sheriff do not make his Return, a day will be given; and if he do not by that time, the Court will set an Amerciament upon him.

Where any party is attached, and afterward proclaimed, and he comes not in, but stands further out in contempt, in such case a Commission of Rebellion may be issued forth against him, for the apprehending of him, and bringing him into the Fleet, (the proper Prison of this Court) and this Commission of Rebellion is sometimes directed to the Sheriff, and sometimes to private persons; as in the Case of *Gage and Etrington*, Trin. 38. *Jacob. Tethil. 37.* This course is likewise taken against those that perform not obedience to Orders or Decrees to pay costs, or the like.

Where private persons are made Commissioners, and to take the person in contempt; if they suffer him to escape, the Solicitor may

may by motion get them committed, till they bring him in; as in the Case of *Sachevarel* against *Sachevarel*, *Hill. Term*, 18. *Jacob. Tothil.* 38.

: If any person rescue one taken by a Commission of Rebellion, the Rescuer may be gotten to be committed. And if the Commissioners, upon such a Commission, let the party in contempt go where he list, whereby he make an escape, they may be procured to be committed to the Fleet, till they pay the Debt. See *Nelsons Case* against *Yelverton* in *Trin.* 18. *Jacob. Tothil.* 39.

If a party appears not, but stands further out in contempt, a Sergeant at Arms may be sent out to take him: and if he cannot, either by reason of his hiding or resistance; or having taken him, he escape, and so persist higher in his contempt; in such case, a Sequestration may be obtained, upon a motion and Affidavit thereof, of his Land: and if the Suit be for Land, a Sequestration and Injunction for the profits of the Land, to be delivered to the Plaintiff by the Sheriff, or other Commissioners for that purpose: as in the Case of *Boles* against *Walleg* and his wife. *Caryes Rep.* 38, 58, 105, 109.

In all these Cases, it behooves a good Solicitor to be careful, watchful, and diligent, that

that he may not slip any opportunity that may work for the advantage, benefit, and behoof of his Clyent and his Cause.

S E C T. 2.

THe next part of our Solicitor's practice, is to be skilled in Bills and Answers, and the several proceedings thereupon: wherein he must observe, That the Plaintiffs Bill is in effect the same that the Declaration, after an Appearance had, is, either in the Kings Bench or Common Pleas, and layes down the cause of his Complaint in Chancery, being usually such as is exempt from remedy at Common Law; and therefore they commonly insert in the Bill these words, *That the Plaintiff hath no remedy at Law.* And this Bill, by continuance of such practice, may be put in after the *Subpoena*, is both taken out and served, so as it come in within the time before limited in the former Section, to prevent costs.

This Bill in Chancery, and all subsequent Pleadings and Proceedings upon it, must be succinct and short, and not stuff with repetitions of Deeds, Writings, or Records, (*in hæc verba*) but the effects and substance of so much of them onely as it is pertinent and

mate-

material to set down; and that in brief terms, without long and needless traverses of things not traversable, and without tautologies and impertinencies. Neither must it contain any matter either Criminal or scandalous against the Defendant, or any other; and if it do, the Defendant may refuse to answer it, and the Plaintiff and his Counsel (whose hand is to it) may be punished for it; and any other party grieved may recover costs against such Counsel.

Where any Bill contains matter not proper for the Court to give relief in, the Bill may be gotten dismissed: and so likewise will it be, if there want Counsel's hand to the Bill, or if the Counsel's hand be counterseited or disallowed.

To such a Bill rightly fitted and filed, the Defendant is to make Answer: wherein many times he makes much delay: but in all cases of delay, he must upon Oath satisfy the Court of the cause of such his delay; which may be in several respects: as,

First, Where the matter contained in the Bill is such, as to which he cannot give an answer direct, without conference had with some other person in the Bill named, or to whom the Bill refers.

Secondly,

Secondly, Where the Bill chargeth the Defendant with the having of Evidences or Writings, or Goods or Chattels of the Complainants, to make discovery what they are : in such case the Evidences or Writings, and Goods, being in the Country, and he in London ; he may make Oath, he cannot answer perfectly to the Plaintiff's Bill, without sight and perusal of the Goods, Evidences, or Writings which he hath in the Country. Upon which Oath so made, the Answer will be suspended till the first day of the next Term : but in these cases, the place in the Country where the parties live, Goods, Evidences or Writings lie, must be above twenty miles from London : for if it be nearer, he must answer in eight dayes after appearance, unless further time be given by order.

There may also be Oath made by another person, either the Solicitor, his Servant, or Neighbour to the Defendant, that he is sick, and cannot travel without danger of life : and upon such an Oath, a *Dedimus Potestatem* (if the Plaintiff will not consent to it) upon a motion or Petition, will be allowed to the Defendant. But heed must be taken, that the Order whereby it was granted, must be carefully entred in the Registers Office ; and the Affidavit upon which the Order is grounded, must

must be filed in the Affidavit-Office. Where the Defendant doth not appear; or that after he hath made his appearance, he doth not answer within the time limited him, nor sheweth any cause for the same: in such case, an Attachment is awarded against him; which must be entred in the House-book of the Six Clerks Office, and likewise in the Register-book, expressing the cause of issuing the Attachment.

Where there is no day given by Rule to the Defendant to answer, in such case the Defendant is at liberty to answer at any time during the Term: and where the Defendant makes default within that time to answer, then an Attachment may be sued forth against him of Course, and the same with the cause thereof must be entred, as before is mentioned in the last Paragraph³⁵.

Where the *Subpœna* is made returnable so near the end of the Term, that there cannot be a day given to the Defendant to answer; in such case the Defendant must at his peril answer by the same day seven-night next following the day of his appearance, although it be out of Term: for the Chancery is said to be alwayes open. But where the *Subpœna* is returnable on the last Return-day of the Term, then the Defendant is at liberty to
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appear the first Return of the Term following. But if the *Subpœna* be returnable upon a day certain, although the day be the last day of the Term, yet the Defendant is bound to appear and answer by that day seven-night next following the said appearance.

In all Cases where the Defendant makes Oath, That he cannot answer without sight of Writings, Evidences, or Goods, as aforesaid, or conference with some other person, or that he have a *Dedimus Potestatem*, and Commission to take his Answer in the Country; the Defendant must at his peril procure his Answer to be put in before the day after the first costs-day of the next Term following, unless it be in *Trinity-Term*; for there it may be put in the second day after the second return; or otherwise, the Plaintiffs Clerk may upon his default make out an Attachment against him for not answering in time.

Where the Defendant hath a *Dedimus* granted him, if there be cause of Plea or Demurrer found, then the Defendant ought to move or petition the Court to have a special *Dedimus Potestatem* by order to answer, plead, or demur; for that the Commissioners upon an ordinary *Dedimus* have power to take and return no other things than an Answer only.

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Where

Where the Defendant doth demur, or put in any just Plea that he hath to the disability of the person of the Plaintiff, or to the Jurisdiction of the Court, under the hand of learned Counsel; it will be received and filed, although the Defendant do not deliver the same in person, or by Commission. And if he do not put in his Demurrer or Plea into the Paper of Pleas and Demurrers in the Register-Office appointed for purpose, within eight dayes after the same is put into Court, that so it may be argued before the Lord Chancellor or his Deputy, as it shall fall in course; the same being so omitted to be done, the Plea or Demurrer is over-ruled of course, and the Plaintiff may take forth a *Subpoena* to inform the Defendant to make better answer, and another for costs for the said over-ruling.

Where a man exhibits his Bill in Chancery, and dies *pendente lite*, whoever hath the interest in the thing complained for, whether Heir, Executor, or Administrator, they may put in a Bill of Reviver against the Defendant: or in case the Defendant die, the Plaintiff may exhibit his Bill of Reviver against the Heirs, Executors or Administrators of the Defendant.

Where

Where a Bill is exhibited against a man and his wife, and the matter contained in the Bill, wholly concerns the wife, and they both answer the Bill, and after answer, the husband dies; in this case, a Bill of Reviver must be brought by the Complainant against the woman, if he intend to proceed in that Suit: and the reason is, for that the woman shall not be constrained to abide by that answer which she, together with her husband, or solely as wife unto the man, hath formerly made to the Complainant, for that she was at that time under Coverture. And in case she survives her husband, and continues possessed or seized of the thing in controversy *in statu quo*, she may as she shall think fit, make a new answer, and shall not be bound up or concluded by that answer which she made during Coverture, or solely as wife to the man: and yet if she thinks fit, she may stand to that former answer of hers, and proceed accordingly in that Suit.

Where a Plaintiff exhibits his Bill against a *Femme sole*, and she appearing, makes answer, and afterwards marrying, becomes under coverture *pendente lite*: in this case the Plaintiff may proceed against her and her husband, and shall not need any Bill of Reviver; and her husband shall be bound by that Answer

which she made while a *Femme sole*, for that she shall not advantage her self by her own act.

Whereas, on the other side, if a *Femme sole* exhibit her Bill, and the Defendant answer thereunto, and afterwards she intermarrieth; here there can be no further proceeds by the husband and wife, without a Bill of Revivor, because she hath abated her Suit by her own act of marriage, of which the Defendant may take his best advantage.

Where the man and the Wife exhibits a Bill, whereto the Defendant answereth; afterwards the man dieth, the woman may be at her choice, whether she will exhibit a new Bill, or proceed upon the Bill by her husband and her self formerly exhibited.

Where there are two seized of Joynt-estates, or when they are Executors of one Will, or Obligees or Obligors, and they prefer a Bill in Chancery, to which the Defendant makes Answer; and after one of them dies; here the Survivor may proceed in his Suit against the Defendant, and shall need no Bill of Revivor.

Note, That the Bill of Revivor must pursue the first Bill exhibited: for where there is any variance between them, the Defendant may be discharged, and the Bill will be dissolved.

Where

Where there are Administrators *durant minore etate* of an Infant, Executors in the nature of a Guardian, and, they sue on the Infants behalf; and the Suit depending, the Infant comes to age, here it seems there needs no Bill of Revivor.

Where the Complainant hath exhibited his Bill of Revivor, and hath procured thereupon a *Subpœa* to be served, he will be upon this in the same case, as the Predecessor was when the Bill accrued, unless some good cause to the contrary (as, that he is not Heir, Executor, nor hath the like interest, &c.) can by the Defendants Answer be shewed.

Where a man doth willingly refuse to Answer, and doth stand out all process of Contempt, the Court will take the matter of the Bill *pro confesso*, and decree it accordingly. See *Tothil. 69.*

If the Answer be good to common intent, the Plaintiff must Reply, and prove the matter if he can, and not insist upon insufficiency of the Answer.

No exception can be taken to an Answer after a Replication put in; for it is then admitted to be good; but before Replication, it may be excepted against. But where it is excepted against, the causes must be shewn in Writing, and delivered in to the Plaintiffs

Clerk the same Term the Answer comes in, or with eight dayes after: and if he amend it in eight dayes, he shall pay no costs; otherwise he must.

Where an Answer is excepted against as insufficient, it is usually referred to a Master to consider of the Exceptions, and he to certify whether it is insufficient, or not: if he certify it insufficient, then the Plaintiff may take out Process for costs, and the Defendant's second Answer is not to be received, till he hath paid the costs.

The first Answer being returned insufficient, the Defendant must pay forty shillings for single costs: if it be an Answer that came in by Commission, and insufficient, he must pay fifty shillings costs.

The second insufficient Answer pays three pounds, the third five pounds: and you may have a *Subpoena* both for cost, and for a better Answer.

In all cases of Exceptions, the insufficiency appearing in the same Exceptions, are the point to be insisted on, and no new Exceptions may be moved. But if the Master upon reference finds the Answer to be sufficient, and accordingly certifies it, there the Plaintiff must pay forty shillings costs.

If the Exceptions to an Answer be put in after the Term, there shall be time given to answer them untill the fourth day of the next Term, unless the Court hasten it.

If an Answer come in by Commission, and be not good, no new Commission will be admitted, but upon Oath of inability of the person, and his payment of fifty shillings costs, as before.

Where a Cause goes to hearing upon Bill and Answer, the same must be admitted to be true in all points; and no other Evidence is to be admitted but what is matter of Record, to which is provable by the Record it self. *Charges Rep. 78, 30.*

SECT. 3.

THe third thing necessary for a perfect Solicitor, is, to understand clearly the matter of Pleas and Demurrers: wherein he must observe: First, That a Demurrer is alwayes where there is matter defective contained in the Bill, or where is forraign matter.

The Plea of forraign matter may be of two sorts: either where it is to the Jurisdiction of the Court, or to the disability of the person: as, where the Plaintiff is Out-lawed or

Excommunicate, or where there is in this, or any other Court, a Bill or Suit depending for the same cause : or, it may be, that the Cause hath been formerly dismissed in this Court, or the like ; or if the matter of it appear upon Record, it may be put in without Oath, otherwise not. In case it be a Demurrer, it must express the cause of the Demurrer : yet other causes may be insisted on at the time of arguing thereof in Court. When if the Demurrer be over-ruled, the Defendant shall pay five Marks costs ; and where it is allowed, the Defendant shall have no costs.

If one plead a Plea that is insufficient, and is over-ruled to be, as where it is an Out-lawry pleaded ; and it is not a good Plea, he must pay five Marks costs.

An Out-lawry is not to be pleaded, unless you plead the Record *Sub pede Sigilli*. Also

A Plea of Out-lawry, if it be in a Suit for the same thing for which a man sueth to be relieved in Chancery, is not to be allowed ; but otherwise it is allowed, and will be in force to hinder all the Plaintiffs proceedings, till it be reversed. But when it is reversed, the Plaintiff may upon payment of twenty shillings costs, upon a new *Subpoena* served, put the Defendant to answer the same Bill.

Where

Where the Plaintiff conceives the Plea for matter or manner naught, he may put it to the Judgment of the Court.

Where a man pleads a former Suit, he need not set it down with the Register; but it shall be referred to a Master to certify, (which must be done within a Month upon the Plaintiffs procurement) and if the Master certify against the Plaintiff, he must pay five shillings costs: if there be no Report within a Moneth of filing the Plea; the Bill will be dismissed of course, with seven Nobles costs.

If the Demurrer to any Bill be put in upon any slip or mistake in the Bill, the Plaintiff of course laying down to the Defendants Clerk twenty shillings for costs, may amend his Bill within eight dayes after the Demurrer put in, but not after that time.

If the Demurrer be admitted by the Plaintiff to be good within eight dayes after the filing of it, and he doth pay the Defendants Clerk in Court forty shillings costs, then the Defendant shall not need to attend his Demurrer; but the Bill shall stand dismissed of course without motion, unless both sides agree to the amendment of the same: yet such dismissal is to be no bar to a new Bill, to be exhibited by the Plaintiff.

Where the Plaintiff finds sufficient cause

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for

for an Order upon the Answer, he may go to hearing thereupon without further proof, (of which there ought to be very good advice taken) in which case, he must get his Clerk to present the same in court, to be set down to be heard upon Bill and Answer. But in case the Court shall not find grounds to make a Decree or final Order, the Bill shall be dismissed with costs; or the Plaintiff admitted to reply, if he deserve it; first paying down five pounds costs within four dayes after such hearing; else the dismissal to stand, and the conclusion of the Order upon hearing is to be penned by the Register accordingly: and then such dismissal shall be a good Plea in bar of any new Bill for the same matter.

Where a Plaintiff proceeds so far as to proof, and upon the hearing, it clearly appears, that the Plaintiff might have had full relief upon Bill and Answer, albeit he be relieved in the same cause, yet he shall pay costs. See more fully these things in the Collection of Orders, and *Caryes Reports*, 39, 87.

S E C T. 4.

Other things in practice necessary to be understood by our Solicitor, are, Re-
plications, Rejoinders, and Sur-rejoinders.
New

Now a Replication is the Plaintiffs speech, in way of a Reply to the Defendants Answer : the Rejoynder is the Defendants Answer to the Plaintiffs Replication ; and the Surrejoynder is the second defence to the Plaintiffs Action, opposite to the Defendants Rejoynder.

1. The Replication must be short, relating to the substance of the Bill ; and it must avoid superfluous and criminous matter.

2. The Replication must affirm and pursue the Bill, and confess and avoid traverse, or deny the Answer.

3. The Rejoynder that must pursue and confirm the Answer, and must sufficiently confess or avoid traverse, or deny any material part of the Replication.

4. No new matter must be put into the Replication ; and so much matter only is necessary to be there, as will avoid the matter of the Answer.

5. If upon the Answer there be so much confessed, that the Plaintiff need not to draw into pleading, and prove all the points ; he must see to it, and reply, and go to proof only in those particulars in question, and necessary to be proved.

6. When the Defendant doth demur or disclaim to any Bill exhibited against him, the

the Plaintiff cannot reply ; and if the Defendant in those cases be served with a *Subpœna ad-rejungendum*, having before made no other Answer, but a Demurrer or Disclaimer, as aforesaid, he shall have costs for unjust vexation.

Where the case is such, that the parties cannot come to issue by reason of some new matter disclosed in the Defendant's Rejoinder, that requires to be answered unto ; the Plaintiff may Sur-rejoyn to the Rejoinder, and the Defendant likewise to the Sur-rejoinder, if there be cause.

As for the time of the Replication to be put in after the Answer ; you are to observe, that the Plaintiff hath time for all that Term, and all the next Term, and untill the beginning of the third Term, to put in his Replication. The next Term after the Answer is put in, the Defendant may give the Plaintiff rule to reply ; and if such rule be given, and the Plaintiff reply not, costs will be given against him : but if there be no rule given, and the Plaintiff doth not reply the second Term after the Term the Answer is put in, the Bill will be dismissed with costs of course. But in case the Plaintiff doth reply, and that the Replication be in Court, the Defendant can have no costs,

Where

Where the Complainant hath replied, the Defendant may, if he will rejoyne *Gratis*, and force the Complainant to joyn in Commission.

Where the Plaintiff intends to go to Commission, he must serve the Defendant with a *Subpœna ad rejunendum*, before he can have Commission to examine Witnesses; and upon return of that *Subpœna*, and Oath made of the serving of it, the Plaintiff may by entering Rules, force the Defendant to rejoyne and joyn in Commission, or go on to the examining Witnesses without him: for having given him seven dayes to rejoyne, if within that time he refuse to do it, he ought not to be admitted to do it afterwards.

Where the Defendant is served with a *Subpœna ad rejunendum*, and doth not upon the Plaintiff's Clerk's demand to the Defendant's Clerk deliver Commissioners Names by the end of the Term, wherein the *Subpœna* is returnable, there the Plaintiff may either without motion or petition give Names, and take a Commission *ex parte*. See *Caryes Rep.*

III. And this hath brought you to another branch of your Solicitors duty, viz. the manner of joyning in Commission, and executing thereof.

SECT. 5.

IN the joyning in Commission therefore to examine Witnesses, the Complainant, according to dayly practice, first gives four Names, and then the Defendant gives four Names: now the Plaintiff or his Solicitor strikes out two of the Defendant's Name, and the Defendant or his Solicitor strikes out two of the Plaintiff's names; and the other four, being on each side two, remain the Commissioners. This being done, and the Commission ready, the Plaintiff is to have the carriage thereof; and he or his Commissioners must give either in person, or by Note left in writing at the place of the usual abode of the other party, fourteen dayes notice to him of the time and place of executing the Commission: and if there be default then made by the Plaintiff or his Commissioners in the execution thereof, he must pay the Defendant such costs, as he upon his Oath, shall make appear he was put to in the attending the said Commission; and the Plaintiff must renew the Commission at his own charge, and the Defendant shall have the carriage of it. And so on the other side shall the Plaintiff have, if the Defendant have the carriage of the

the Commission, and it be lost by default of his side. But where it becomes void by an error of the Clerk in making of it, the costs shall be born by him, and that side for whom it was taken out.

Where the Defendant hath the carriage of the Commission, he must give notice to the Plaintiff, as is before directed: and if such notice be not given, either all the examinations will be quashed, or otherwise the Court will grant to the other side a Commission *ex parte*.

Where there hath been Publication, there no Commission can be granted or renewed for examining Witnesses without speciall Order.

Where a Commission hath been to examine Witnesses, without reference and certificate upon it, it cannot be discharged upon a bare petition.

Where a Commission is taken out by consent, and the one side at the speeding thereof do put in no Interrogatories, nor examine any Witnesses, (unless upon a motion, and by order of the Court) he shall never be after admitted to have a new Commission.

Where the Defendant had Witnesses, and they being served, did not appear, but make default, here a new Commission will be granted

granted to the Defendant. See *Caryes Rep.* 91, 45. *Tothil.* 3.

The next thing is the choice of Commissioners, and exceptions against them. First, they must be men indifferent: for the Exceptions that are usually taken against them, are, that he who is named Commissioner, is of Kindred, or Allyed to the party for whom he is named, and so may very well be deemed to side with that party: or that he is Master to the party for whom he is named, or that he is Landlord, or of his Council, or Attorney for him, or one to whom he is indebted, or one that hath a Suit with the adverse party.

The Commission being to be fate upon at the time and place appointed, the Commissioners must call the Witnesses before them; where, if they appear not, an Attachment issues against them, unless it be where Witnesses are impotent, and then the Commission may be adjourned to them, to examine them where they be: and usually the Witness may demand his costs before he Answer.

Where Witnesses appear to be examined, the Commissioners or Examiners must examine them themselves, and not leave so weighty a business to the trust of their Clerks, or others to do it. They are to hold the Witnesses to the point insisted upon. They should
examine

examine them but to one Interrogatory at a time, and not to read another to them, till they have answered that first. They are to take what comes from them, in answer to what they are examined; and not upon their sight and reading all the Interrogatories, to let them set it down themselves. After they have been examined, upon better thoughts they may suffer them to amend their Examinations: They ought not neither to ask idle Questions besides the matter of the Interrogatories, nor set down impertinent Answers. They are to set down truly in Parchment their Sayings; and that done, they are to set their hands to every Schedule, and send them up into Court as they are taken, with a Certificate: and if the Commissioners meet with any obstruction in the Work, they must certify that also.

After the Commission is duely executed, and returned up, one of them must deliver it in Court, or they must send it by one that must make Oath, that he received it from one of their hands, and that it is not altered to his knowledge.

If any one of the Commissioners commit any misdemeanor about examination, the party grieved, upon Oath thereof made, may have an Attachment against him.

Where

Where is a disagreement among the Commissioners, or where there is any other special cause that obstructs the Commission, they may have an Examiner sent down on purpose to do it. See *Caryes Rep.* 30, 31, 40, 47, 80, 81. *Tothil.* 189.

The Interrogatories to examine Witnesses, must be succinct and apt : and when Witnesses, upon such Interrogatories, are examined in Court, you cannot examine the same Witnesses upon putting in new Interrogatories.

Witnesses ought to be examined by Examiners in Court, (if they live in or near the Town) and not by Commissioners : for no Commission whatsoever ought to be issued out into any place within ten miles of London.

Either party, as well Plaintiff as Defendant, after Answer put, until Publication be past, may examine what Witnesses they please in Court, before one of the Examiners : but before Answer, and after Publication, no Examination will be allowed, but by special order, some special cause being shewed.

Notice must be given both of the names and dwelling-places of the persons examined, in all cases of examination.

After an Order for Publication, and that deli-

delivered to the Examiner, no Witnesses may be examined in Court, though he were sworn before; and if any such be, his Depositions may be suppressed. *Caryes Rep.* 27, 58, 93. *Totbil.* 189, 190, 192.

No Abstract or Copy of the Depositions of any Witnesses is to be delivered, till Publication be past. Neither may any Depositions be suppressed upon a bare Petition only, with References and Certificates upon it.

Where there are several Causes, which are merely cross Causes between the same parties, and touching the same matter, there the Depositions of Witnesses in the several Causes may be used at the hearing of both Causes, (being heard together) without any motion.

Where Depositions are regularly taken, they may not be suppressed by motion: but if any Depositions appear to the Court to be gotten by practice, they may by order of the Court be suppressed. Depositions taken in Chancery, may by order of the Court be made use of in any other Court. *Caryes Rep.* 35, 56.

He that will examine Witnesses, (*in perpetuam rei memoriam*) to preserve a testimony, he must first exhibit his Bill, and shew his Title to the thing, and that the Witnesses to prove.

prove it, are old, and not like to live long, whereby he is in danger to lose it; and then pray a Commission to some Gentlemen of credit in the Country to examine them, and a *Subpoena* to the parties interested, to shew cause, if they can, to the contrary: and if the party interested being duly served, within fourteen dayes shew cause, the Plaintiff must desist; and if no cause be shewn, he may go on alone, if the other will not joyn with him, as he may, if he will: and then fourteen dayes warning is to be given of the execution thereof. In this case the Court will appoint Commissioners, and give Articles to examine upon; or they may be examined in Court by an Examiner. But here observe, That none but aged and impotent persons may be examined upon this Commission.

Where the Defendant takes Exceptions to the proceedings in speeding the Commission, as, whether he did appear or not, and whether Oath were made before them of notice given to him of the time and place of execution thereof; in such case the Commissioners must certify up with the Commission, the Exceptions the Defendant so took.

This testimony taken upon this Commission, is not to be published while the Witnesses live; but in some cases, as either by consent
of

of the parties, or upon Oath made, that either the Plaintiff hath some tryal at Law, wherein he shall need it, and that the Witnesses are not able to come to the place, or otherwise by order of Court; and then the Commission is to be opened by a Master, and to be considered of; and afterwards it may, if the party will exemplify it, by order of this Court, be given in evidence in any other Court.

These Depositions thus taken, shall not be made use of to be given in Evidence against any other but the Defendant, who was warned to defend it, his Heirs or Assignes, or some other claiming by or under him, by some interest which accrued to him after the Bill preferred. *Totbil* 189, 190, 191, 192.

Where both Plaintiff and Defendant have examined what Witnesses they please, and are ready to go to hearing, there neither of them must first give the other a Rule for Publication: which Rule being expired, and no cause shewn to the contrary, then Publication passeth. After which, neither party can examine Witnesses, unless it be by special order of the Court; which will not be granted without an Oath made, that the party which requireth the same, nor any of his Council, or Solicitor, have seen, read, or been made privy

privity to any Examinations of any the Witnesses formerly examined in that cause, by either of the parties; and thereupon some good cause be shewn, either by Oath, or Certificate of Commissioners, why the party could not get his said Witnesses examined within the time limited for their Examination: in which case sometimes the Court giveth liberty to examine Witnesses by a time prefixed: with this *Proviso*, That the party shall not in the mean time see any of the said former Examinations.

After Publication is had, the Plaintiff, or, if he neglect, the Defendant may procure a day of hearing of course to be set down by his Clerk at the end of the Term, when either the Lord Chancellor or Master of the Rolls do set down Causes to be heard.

The days must be set down according to the priority of Publication; neither must any Cause be presented for hearing, the same Term that Publication passeth.

All Process to hear Judgment must be returnable six or seven days before the day of hearing, except it be in the beginning of the Term, when the time will not bear it: and the Writ must have on the back of it the very day of hearing; at which day, if the Plaintiff do not appear, the Defendant is to be dismissed with costs. *Caryes Rep.* 45.

SECT.

S E C T. 6.

O ur Solicitor having thus far, with diligence, managed his Clyents businesse, and brought his Cause to a hearing; the next point of his care will be to get the Decree drawn up; which should be done as short as with conveniency it may, and not recite the Pleadings at large, but the sum thereof briefly. And if it be made before the Master of the Rolls, or any of the Judges, it ought, being drawn, to be first signed by them, and afterwards by the Lord high Chancellor, and then it must be inrolled; which Signing and Inrolment ought to be done before the first day after the next *Michaelmas* or *Easter-Term*, after the making of it.

Where the Decree concerns Lands or Leases, it must be entred into the Registers Docker-Book, within six Months after the making of it; otherwise it shall not prejudice the Purchaser of the Land: neither indeed shall any Decree be binding to any but those who are served with *Proceſs ad audiendum Judicium*, or that did appear *Gratis*.

The Purchaser that comes in by Conveyance *bona fide* from the Defendant, before the Bill exhibited, and that is no party by Bill or Order,

Order, shall not be bound up by any Decree. But where a man becomes a Purchaser, *pendente lite*, and without any colour of privity, or allowance of this Court, there it shall regularly bind him: yet in such case, if there have been any intermission of the Suit, or the Court be acquainted with the Conveyance, then the Court is to give order and direction in it.

No Decree made by the Court can be crossed, altered, or explained upon a bare petition only; and yet thereby it for some special Reasons may be stayed for a while, till it can be moved in Court.

Reverend A Decree once inrolled, cannot be reversed or altered but by a Bill of Review, unless it be in case of mis-casting, where the Case is demonstrative; and then it may be done by Order.

A Decree will bind the person of a man: for where any do refuse to obey it, the Court will imprison them, till they conform. It binds also the Rights and Titles to Lands and Goods: for, the Court by Order of Sequestration and Injunction, will dispose of the possession thereof for ever to him to whom the Court judgeth the right to belong in conscience.

Where a Decree is to be made upon a
 preference

presence of Equity against the Judgment of another Court, that Judgment is first read; and then the Decree is not to vacate the Judgment, but to order the unreasonable party.

The Decree being thus obtained, our Solicitor may sometimes meet with stubborn and perverse people: it is most requisite therefore, that he be instructed how the Court doth use to enforce Obedience to their Decrees, and to punish the breach of them; that so he may the better know which way to take to procure the Court to do the same in his Clyents behalf: And that is to be obtained thus,

First, he must serve the party with the Decree it self, under the Seal of the Court; and if he yield not obedience thereunto, but stands obstinate, then proceed to take out all the Processes of contempt against him one after another; and the party being taken, will be straightly imprisoned, and not set at liberty, till he yield obedience to it; that is, that he perform that part of the Decree which is presently to be done, and give security to perform the other part which is to be done in the future. Also the Lord Chancellor may for his contempt fine him what he please, and afterwards the same may be executed.

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Where the Decree is for Land, and the party remains obstinate or wilful after his imprisonment, the Court upon motion will grant an Injunction for the possession: and this being disobeyed, after it is served, and Oath made thereof, the Court, in that case, will grant a Commission to some Justices; and, if need be, a Writ of Assistance to the Sheriff to put him in possession. *Caryes Reports* 23, 34, 36, 37. *Tothil* 56, & 57.

Where this Injunction is granted for possession of the Land, and the party sits out all Process of contempt, and cannot be found by the Sergeant at Arms, or make a Rescue; there the Court being by Oath upon motion informed thereof, will grant a Sequestration of the Land. *Tothil* 107. And this Sequestration is granted sometimes as well of the Goods, as of the Profits of a mans Land; and that for his wilfulness in standing out in contempt, and disobedience to the Court, as well where it is for discharge and payment of Debts and Duties, as where the Decree is for payment of a sum of money. *Tothil* 175, 176.

SECT.

SECT. 7.

IN case of contempts upon force or ill words, used upon any that serveth Process, or other words of scandal to the Court; if they be proved by Affidavit, the party forthwith upon motion will be committed, if the words spoken deserve it.

For other contempts against the Orders of the Court, take in short, as followeth. First, An Attachment goes forth upon Affidavit made of the contempt; then the party being taken, is to be examined upon Interrogatories; which is many times upon motion referred to one of the Masters of the Chancery.

The Contempter coming in *Gratis*, or upon Process, should give notice to the Clerk of the other side, of his appearance: and if there be not Interrogatories put in within eight days, or being examined, if no reference be of the Examination, nor Commission taken out of the other side, or Witnesses examined to prove the contempt in a Month; the Contempter shall be discharged, and shall recover costs, to be taxed by a Master without any motion. But if after he have appeared upon the contempt, he depart unexamined,

he must stand committed, till he be examined and cleared; and if it be found, he must clear it, and pay costs ere he be discharged.

Such as stand committed for contempts upon Attachments, or Commissions of Rebellion, must enter into Bond to attend from day to day, and not to depart without leave of the Court. *Caryes Rep. 9, 44, 70, 71, 82.*

Imprisonments upon contempts for matters just, may be discharged *ex gratia* after sufficient imprisonment; or, it may be otherwise dispensed withall. But where the imprisonment is for non-performance of any Order of the Court in force, then the person so in contempt ought not to be discharged, except he first obey; only the Court may dispense with the contempt for a time.

Review After all this, and a Decree performed, or else the party in prison for non-performance, as aforesaid; yet ought our Solicitor to understand, that his Clyent for all this may be a great way off from an end: for, upon performance and obedience to the Decree, a Bill of Review may be brought. At the putting in of which, the party that prefers it, must enter into a Renognizance, with Sureties for the satisfying of Costs and Damages for the delay, if it be found against him.

Where

Where a Cause is dismissed upon full hearing, and the dismissal signed and enrolled, it cannot be retained again, but by a Bill of Review; and that in some special cases too: for,

No Bill of Review is grantable but upon Error in Law, appearing in the body of the Decree it self, without averment or further examination of any matter or fact which might have been had at the time of the Decree, unless he shew some new matter which hath risen in time after the Decree, whereof the Plaintiff could not have advantage before; and then, upon Oath made, that there is a discovery of such new matter; this Bill (by the leave of the Court) may be exhibited, giving security as before.

Where the Decree is to yield the possession of Land, deliver Writings, or to pay money, he must first perform that before a Review: but if the Decree be to extinguish a Right, convey Land, release a Debt, acknowledge satisfaction, or to cancel Records or Evidences, or the like; it may be stayed by the Court's order, till the Bill of Review be determined.

No witnesses which either were or might have been examined upon the former Bill shall upon this Bill of Review be examined upon any matters. *Tohil 173.* D 3 Chap

CHAP. V.

showing our Solicitor several other Incidents which he ought to be skilled in, and much relating to his Practice.

HAVING now in the former Chapter, and the several Sections thereof, passed through the general proceedings of the Chancery, upon Bills, Answers, and all other things, even to the Decree and Review thereof; there are yet some things remaining, which, in many cases, are not only incident, but even essential to those affairs wherein our Solicitor ought to be particularly skilled. And the first of these is concerning Injunctions.

And this is looked upon in the general Acceptation, as a main and chief branch of the power of the Court, for that it makes stay of Proceedings at Common Law; and, as before is said, is many times granted to gain possession of Land, and so becomes subsequent to the Decree.

Where it stays proceedings at Law, in some cases it gives leave to go, to Tryal and Judg-

Judgment, but stays Execution ; and where the matter of Law is tryed, it bars them from Judgment, as the cause may be.

Or where there is a Judgment, and that executed, it will stay the money in the Sheriffs hand, after the party is arrested at Law for the money.

This Writ is commonly procured, either upon some Writing or matter of Record plainly appearing, or upon a very old Debt that hath long slept, Creditor and Debtor being both dead : or in such cases, where the Defendant doth not appear, but fits an Attachment ; or if he appear, either Answers not the Bill, or confesseth not so much thereof as is sufficient.

Where either the Defendant is beyond the Sea, or being in the Kingdom, doth absent himself, so that he cannot be served ; or where upon any pretence he hath gotten time to answer ; the Court doth usually in those cases, upon motion, grant an Injunction to stay suit, till the Defendant doth appear.

Where a Commission is granted to take an Answer in the Country, an Injunction upon motion will be granted to stay the Defendants Suit at Law (if any be) till the Answer come in : and of this the Defendant is bound to take notice, though he be not served therewith.

Where there is a Verdict at Common Law in an Action of Debt, and a Bill be afterwards here exhibited for Relief, the money must be deposited in Court, before an Injunction can be obtained, unless in some cases, where some special matter in Equity appears by the Defendant's Answer, or in some former Decree.

Where a person priviledged in this Court, is sued elsewhere, that Suit may be stayed by an Injunction.

Where Timber is unjustly felled, ancient Meadow-ground plowed up, ancient Pastures that have not been plow'd up in twenty years before, or for the Maintenance of Inclosures kept in twenty years before, an Injunction is grantable according to the case.

Where an Injunction is granted to quit a possession, it is granted of Houses and Land only, and not of a Rent, or such-like thing: and it is not to be granted before the hearing of the cause, unless upon an Oath, that the Plaintiff was in possession at the time of the Bill put in; and then only of that possession he had then and three years before, and at the time of the motion, and not be extended to the possession of those from whom he claims. And this shall not hinder the Defendants Suit in Law, making of a Lease, taking

taking of a Distress, &c. And this Injunction will soon be dissolv'd again, if the Plaintiff delay his Suit.

Where it is to stay or remove a Suit by *Certiorare*, Bond must be first given, that the Bill hath matter sufficient in it to bear it, and shall be proved true within fourteen days after he hath the Writ; and if it be not done in that time, after Certificate of his neglect from the Examiners, it shall be dismissed with costs, and a *Procedendo* granted.

Where the Injunction is to be obtained by motion, for matter in the Answer, there the case must be put in writing to the Court.

Where it is granted upon the merit of the cause, or upon special cause in equity, it is to stand till the hearing, unless the Plaintiff delay his Suit.

This Writ thus obtained, must be served either on the party himself, his Counsel, Attorney or Solicitor, &c. as the case requires; and the manner of serving is much like to that of serving a *Subpœna*.

A bare Petition only will not dissolve an Injunction; nor, if it be had by motion, can it be dissolved without a motion of the adverse party.

Where an Injunction is granted till the Answer be put in, and no order be made to

continue it within fourteen days after the Answer come in; in this case, it shall be dissolved upon the Register's Certificate thereof only. And if no Motion be made that Term, or at the next General Seal after the Term, to continue it for insufficiency of, or matter confessed in, the Answer; it is of course dissolved: so where it is to stay a Suit at Common Law, and the Plaintiff doth not proceed for three years together.

Where the Injunction is disobeyed, (if you would force obedience thereunto) upon Oath made thereof, all the Processes of Contempt are to go out against him one after another; and being taken, he is to be imprisoned till he yield obedience to it, or give security to do it. Nor is he to be heard in the principal case, till he yield obedience in every thing to the Injunction. *Tothil 107. Cases Rep. 112, 113.*

SECT. 2.

ANother material point is about Dismissions, and how they are to be managed and attained. Concerning which, he is to know, That this is prayed by motion, and had upon Plea to the Bill, or at the hearing of the Cause; but not after Examination of

of Witnesses before hearing, but upon a discontinuance of prosecution, and then by motion and order.

Where the Plaintiff discontinues his Prosecution, after all the Defendants have answered by the space of two Terms, the cause is to be dismissed the third Term upon course: but after a Replication put in, it cannot be dismissed without an Order upon a Motion,

Where a Cause is dismissed upon a full hearing, recorded and certified by the Lord Chancellor; it cannot be again retained, nor a new Bill admitted, but where there is new matter.

Where the Bill is duly dismissed of course, or by order, no motion will be heard to retain it, till the costs assessed upon the dismissal be paid, and certified from the Clerk on the other side, that it is done.

No Dismission, or retainer upon a Dismission, will be granted on a bare Petition only.

In cases of Dismission not upon a full hearing, to a new Bill this may be pleaded.

But generally for all causes of Dismission, the Court will retain and dismiss as they see cause, as daily practice and experience doth plainly manifest. See *Caryes Rep.* 34, 43, 74, 76, *no.*

SECT.

SECT. 3.

A Third point much and frequently incident to practice, are References to the Masters of the Court, and their Reports thereon. Which happen upon several Occasions : As,

Where there is a Demurrer to the Jurisdiction of the Court, there no Reference may be had to a Master upon it, but it must be heard before the Lord Chancellor himself.

After examination of Witnesses is past, there can be no Reference had to a Master to end and determine, unless it be in case of near kin, poverty, or consent of parties.

A Reference of the state of the case is sparingly granted, unless where there is the consent of parties. The examination of Court-Rolls is to be by Reference; but there it must be by two Masters at the least.

No Reference shall be made of the insufficiency of an Answer, without Allegation of special causes. The Reports of the Masters upon References, must not exceed the order of Reference, whereby the same is referred. And after the Master hath seen the order, he usually grants out a Warrant, which is
shewn

shewn unto the other side, whereby he gives notice of the time of his hearing the Cause; where the other side, with their Counsel or Sollicitor, or both, may, as they see cause, attend.

The Report it self is usually brief of what only they find; wherein the Master ought not to certify his own opinion, but leave the same wholly to the Judgment of the Court: and if the Cause be very doubtful, then must he set forth the special case.

No Order can be had to confirm the Report, till it be first filed with the Register, under the Master's hand, and a day given to the other side for seven days at least to speak to it in Court. But where it doth not ground a Decree, and it be positive, it doth usually stand; and process may be taken out for the performance thereof, unless the adverse party, upon notice thereof, do within eight days after (if it be in Term time) or if at the General Seals for motions, or if after them, within four days of the beginning of the next Term, file exceptions to the same. And in such case the party that so filed exceptions, must deposit forty shillings with the Register, and a day will be set for the Judgment of the Court: and if the Court do not allow the exceptions, the other shall have the forty shillings;

shillings, and what more the Court shall think fit: if otherwise, the money is to be restored.

The matters chiefly under Reference, are either insufficient Answer, matters of Account, contempt, or abuse of the Court.

Where a Master upon a Reference to him, Reports an Answer insufficient, the Complainant may take out two *Subpœna's* against the Defendant, the one for twenty shillings costs, and the other to make a better Answer.

SECT. 4.

THere are many Occasions intervening in a cause, which do require a Motion to set them right: now every motion procures an Order, (now it behooves our Solicitor not to lead his Clyent into unnecessary and chargeable motions) and every Order must be drawn by the Register who save then in Court, and took Notes thereof (when the same was pronounced) into his Book; by which, to draw up some more full remembrance of that which passed in Court. Which, that it may the better be done, our Solicitor after the rising of the Court, ought to repair to the Registers Office; and there finding

finding the Notes, and shewing them to the Register or his Clerk, to have instruction for the drawing up of the said Order for his Clyents better advantage.

Where any Order shall be made, and the Court not informed of the last material Order formerly made, no benefit shall be taken by such Orders, as being surreptitiously procured; and therefore the Register doth alwayes mention the last former Order, in the Order that he draws up at present.

An Order made out of the general Rule, must set down the special Reasons of it.

No Order shall be explained by petition, but by publick motion, both parties being heard.

No Order but final Orders and Decrees may be received to be entred after eight days after the pronouncing thereof, that day being included.

The Register is to keep Copies of the Orders he doth deliver, and he is to mark the same; which done, it is to be entred by the entering-Clerk, and so brought back again to the Register, for his hand to be put to it, and then it is authentick.

The Register after a hearing and reference to a Master, is to set down in the Order
of

of Reference what was the Opinion of the Court, unless the Court do direct it to be drawn otherwise.

All Orders drawn up by the Registers, are to be entred under the Registers hand in due time; and after they are once so entred, they may not be in any manner, upon any occasion whatsoever, altered, without a special Order and direction of the Court to that purpose.

It was an ancient piece of practice, but I think now almost superannuated, that the Register within ten dayes after the end of every Term should certify the Lord Chancellor, or Lord Keeper for the time being, what References depend in the hand of any Master, and how long they have depended; that so if any of them have depended over-long, the Court may require an account thereof from the Master, and quicken him to a speedy dispatch.

SECT. V.

IT doth often fall out, that some persons may have right to an Estate, yet not wherewith to prosecute the same; or else may be made parties to a suit, as knowing much therein, yet have not wherewith to make either a defence or discovery: in such Cases the party making
Oath

Oath before a Master of his poverty, and exhibiting the same either to the Lord Chancellor or Master of the Rolls, together with a Petition, they, or one of them, will admit him to sue *in forma pauperis*, and assign him such Counsel, Six Clerk, &c. as he shall desire.

But here it is necessary for our Solicitor to know, that there are many Paupers who bring only vexatious suits; which if he can discover, and inform the Court thereof, they shall not only be dismissed, but punished: however such thing be made appear, the Counsel and Clerk assigned as aforesaid, may not refuse, but must attend their business, unless they shew cause to the Court why they cannot so do.

They must always have their Order of Admission with them; and first move that before any other motion: and indeed it is no hindrance at all to them; for if they have any other motion, they may make it afterward.

Where the Registrar finds he is not in Pauper, he shall not draw up any Order upon the second motion, but the Pauper pretended shall lose the fruit of it.

No Counsellor, Attorney, Solicitor, or Officer of the Court appointed to be for a Pauper by the Court, is to take any thing off, or contract for any thing with him; and the Pauper that can be proved so to have given
or

or contracted, is to be dis-paupered for ever.

If a Pauper sell or contract for his suit, or any part of it, his Bill shall be dismissed, and never after retained.

No Process of contempt shall go out for a Pauper, untill it be signed by the Six-Clerk who dealeth for him; and he must see, there be cause for it.

In all Offices where he hath any occasion to pass any thing, he must still shew his Admission.

Touching Petitions: for the avoiding the multitude of frivolous ones, drawn by persons who are altogether ignorant of the practice and course of the Court, and the true state of the Petitioners business, it were to be wished that none but able Solicitors, such as are described before, both for Learning and Parts; and not every broken fellow, that can scarce write his name, be allowed by the Court to practise, as is before mentioned, *Page 27.*

SECT. VI.

ANother thing fit for our Solicitor to know, is, the matter of Affidavits, and how they are to be made, that they may be effectual. You must know then, that Affidavits are

most generally made before Masters of the Chancery: but where it is for the serving of a *Subpoena*, they are sometimes taken and certified by others.

An Affidavit may not be taken against an Affidavit: for if it be, the latter is not to be used.

An Affidavit ought not to be taken tending to the proof or disproof of the matter in question; nor may any such matter be admitted to be colourably inserted into an Oath made of the serving of Process. *Caryes Rep.* 63, 69, 81, 82, 84, 85, 98, 99, 103. *priviledged person*

There is also another point fit for our Solicitor's knowledg: for many times there may be some one belonging to the Court, who is thereby a priviledged person, by which means he cannot be sued for debt. In such Case, and against such a person so priviledged, a Declaration for debt, or any other thing whereof the Court holdeth Plea, is to be delivered to one of the Six Clerks, whom the Plaintiff make h as his Attorney; and he thereupon giveth a day (as is commonly termed, which is a week, *viz.* the whole next Return) to the Defendant to answer: which day entred into the Six-Clerk's Costs-book, (in this manner, *Roberts against Johnson*) a day is given from the day

day of St. Michael in one Moneth, in a Plea of Priviledg.

Day being thus given, the Declaration under the Attorneys hand is sent over to the Petty-bag by one of the said Attorneys Clerks: which Declaration is briefly entred by one of the Clerks there, and likewise the day that is given to the Defendant to answer in a Roll there, which is called *Rotulus rememorations Parvæ-Bagæ*: at which day, by the course of the Common Law, if the Defendant plead not, he is fore-judged the Court. But of late, the course hath been to allow the Defendant a day of Imparlance: that is, day till the next Return after the Return given him to answer; which is in this manner.

The Defendant retaineth one or other of the Six Clerks, who imparleth for him: which is done in the Six Clerks Costs-book, (in this manner, *Roberts against Johnson, Imparlance until the morrow of All-Souls*) at which day it is sent over into the Petty-bag, to be entred into the aforesaid Roll, next under the said Declaration.

The said day of Imparlance being past, another day, *viz.* commonly five dayes in a week, (which is commonly called the Peremptory day) is given by the Plaintiffs Attorney, and entred into the Petty-bag, as aforesaid, to the

the Defendant to plead, or else Judgment is to be entred against him.

If the Defendant plead, his Plea is delivered by his Attorney to the Plaintiffs Attorney; and then if the Plaintiff will proceed to a Tryal, he is to joyn up the Issue, (if he may, for in some Cases he cannot) or else the Plaintiff is to reply, and give the Defendant a day, viz. a whole Term to joyn up Issue, which is given and entred as the day to answer; and if the Defendant by that day joyns not up the Issue, Judgment is entred up by *Nihil dicit*. Here note, That after a Peremptory day given, the Defendant cannot pray Oyer of the Bond and Condition, or such like, as of late hath been used for meer delay: but if the Issue be joyned up, either by the Plaintiff or Defendant, then is the Record made up, and the same with a *Venire facias* is sent into the Kings Bench to be tryed, as an Action there at Issue; and upon Judgment there, execution is thereupon there awarded.

But if the Defendant refuse or neglect to imparl at the day given him to answer or plead (for he may plead if he will) at that day, then is Judgment entred against him, and execution is awarded.

Upon Judgment either by default or *Nihil dicit*, some of these Writs of Execution are

awar-

awarded. If for Debt, the Plaintiff may have an *Elegit*, by *W. l. m. i. n. s. t.* 2. Cap. 18. or else a *Levari facias*, or *Fieri facias*: and if the Plaintiff cannot levy his Debt and Damages, then he shall have a *Capias ad satisfaciendum*, either for all, or so much as resteth unsatisfied.

The Judgment being satisfied, the Plaintiff by himself or his Attorney (if the Defendant desire it) doth acknowledg satisfaction upon the Judgment in the Petty-bag-Office.

It is to be noted, that whatsoever day is given by any of the Six Clerks, and by them entered in their Book, is yet worth nothing if the same be not entered in the Petty-bag.

This is the course used against a person that is privileged by a Forrainer: but if a Forrainer be indebted to a privileged person, or incur a suit, then you must observe this course that followeth.

The Defendant being Arrested by an Attachment of Priviledg, at the suit of a Priviledged person, as aforesaid, must retain one of the Six Clerks to his Attorney, and must put in Bail to the Plaintiffs Action, according to the course of the Court; which is, to appear from day to day untill the Plea be determined, to satisfy the Plaintiff all such sums of money as the Plaintiff shall recover against him

him by reason of this suit; then the privileged man putteth in his Declaration, and thereupon the proceedings are the very same as before against the privileged man.

By the course of the Court, the Defendant is to put in four Subsidy-men, or sufficient Sureties, (be the Action never so small) as appears by *Archibald and Burialls Case*, 23 *El.* wherein the Detendant is bound in 400 l. the sum of the Action, and every surety in a hundred pounds.

If Judgment be given for a privileged person in this Court, he may, if he will, take out Execution as before: but if he will not, then he may take out a *Scire facias* against the Defendant and his Manucaptors upon the Bail: whereupon if Judgment be upon the said *Scire facias* in the Chancery, then Execution is there awarded; but if upon Issue joyned and sent into the Kings Bench, and upon Tryal there, Judgment be given, then is Execution there awarded; and upon satisfaction of the Debt, and damages, the Bail is to be discharged upon the acknowledgment of satisfaction, as before is mentioned against the privileged person.

If either the Plaintiff or Defendant upon Declaration of Priviledg or *Scire facias* demur in Chancery, the Demurrer being joyned, a day is set down by the Lord Chancellor or Lord

Lord Keeper for the arguing thereof before him. And if upon the Argument it fall out to be a *Respondeas ouster*, then Judgment is entred thereupon: and if it be against the Defendant, then Execution is awarded; and if against the Plaintiff, then it is that *Nit capiat per Billam*, that he take nothing by his Writ or Declaration.

But if it be a *Respondeas-ultra*, then is the Defendant to pay costs, and a day given for him to plead peremptorily, or Judgment to be entred.

Thus have I quite gone through the whole practick part wherein our Solicitor ought to be versed: I shall in the next place give you a Table of Fees; which in regard he may in dealing for Clyents have occasions for frequent disbursements, I think it very necessary: which are in short these, and shall make one entire Section, and the last of this Chapter.

SECT.

SECT. VII.

A Table of Fees.

	l.	s.	d.
<p>FOr all first, second, or other Copies of all Bills, Answers, and other Plea- dings whatsoever; as also of all Certificates and Exa- minations, made or taken by vertue of any Commission out of this Court, and of In- terrogatories therewith re- turned; and also of all De- clarations or proceedings by English Bill, or according to the course of the Common Law; and for Copies of Records, Rolls or Eviden- ces brought in to be copyed, or remaining in the said Court; for every sheet of paper containing 15 lines—</p>	50	00	08

For the inrolling of all
 Warrants, whereby any Pa-

E

cents,

rents, Commissions, Licen-	l.	s.	d.
ses, Pardons, Leases, or other	00	02	00
Grants whatsoever, do pass			
by and under the Great Seal			
after the rate of every skin			
so passing the Great Seal—			

For the inrolling of all			
Warrants for Commissions			
of the Peace or Goal deli-			
very, for a liberty for Oyer			
and Terminer, for Pyracies,			
for the preservation of the	00	01	08
Game of Swans, and for			
Commissions for enquiry			
sued out for the benefit of			
any private person; for every			
of the said Commissions—			

For the inrolling of all			
Warrants for all Commissi-			
ons of Appeal, and for the	00	00	04
Admiralty, for every one of			
them —————			

For the inrolment of eve-			
ry Warrant, for every or-			
inary License or Pardon of	00	03	04
Alienation —————			

But if the same be of more			
then ordinary length, then			
according to the length, af-	00	10	00

ter the rate of ten shillings } L s. d.
the skin, and not above—

For inrolling all War-
rants for all Commissions in
the nature of Writs of *Dien*
clausit extremum, *Mandamus*, } 00—03—04
Ideota proband^s, *Lunatic*^s in-
quirend^s, *Melius inquirend*^s,
for every of them—

For inrolling the War-
rants for every Patent or
Grant of the Custody of any } 00—08—08
Ward—

But this of Wards I suppose now to be of
little use, in regard all manner of Wardships
are quite taken off, by a Statute made in the
13th of King Charles 2.

For inrolling the War-
rant for every Presentation,
Donation, or Revocation to
any Rectory, Vicarage,
Deanary, Archdeaconry,
Chancellorship, Treasurer-
ship, or Dignity to any Me-
tropolitan, Cathedral, or } 00—03—04
Collegiate Church; or for
any Cannonship or Prebend

in any of the said Churches,
or for the Mastership in any
Hospitall or Ecclesiasticall
Living, or for the Grant of
any Presentation or Presen-
tations, *pro unica vel pluribus*
viciis thereunto

l. s. d.

For the Inrolling of the
Warrants for every *Manda-*
mus ad Installand'

00—03—04

For the Inrolling of all
Warrants for all Wine-Li-
censes, for every life

00—03—04

Or such Fee not exceeding
that proportion as by the
Chancellor shall be set
down: though formerly
they paid if it were granted
for three lives, but

00—06—08

For the inrolling War-
rants for every Pardon of
Outlawry

00—03—04

For inrolling Warrants for
every Denization or Com-
mission of Bankrupts

00—03—04

For writing of every Ex-
emplification, as well of Re-
cords in the Tower, as of any
Record whatsoever, after the

01—06—08

rate

rate of every Skin—————

The Six Clerks Fee of
every Clyent for every Term
whilst his cause dependeth
undetermined by Decree or
by Dismission, the Termly
Fee of—————

00—03—.04

And so if there be twenty Plaintiffs in one
Bill, they all pay but one Fee for one Term.

But for every three De-
fendants, reckoning the hus-
band and Wife but for one
person, there is due for their
first appearance—————

00—03—.04

And upon the first appearance, if every De-
fendant appears severally by himself, he is to
pay the Fee of three shillings four pence; but
every Term afterwards, during the continu-
ance of the Cause, there is only the Fee of
three shillings four pence the Term to be paid
for all the Defendants that did appear in any
Term or Vacation in the same Cause.

	l.	s.	d.
For a Writ of Subpoena to answer —————	00	02	06
If there be three in the Writ, you pay more —————	00	00	06
For an Attachment —————	00	02	10
For breaking it up with the Sheriff, and his War-rant thereon —————	00	02	04
For the return of the At-tachment —————	00	00	04
For a Proclamation of Rebellion —————	00	02	10
Breaking it up, and War-rant —————	00	02	04
The Return —————	00	00	04
For a Commission of Re-bellion —————	00	18	02
For the enrolment of eve-ry Liberate and Allocate —————	00	03	04
The Rule which the Plain-tiff gives the Defendant to make answer by a day when the Defendant appears —————	00	00	04
For each Rule for publi-cation after examination of Witnesses —————	00	00	04
For entring them with the Register, for each —————	00	00	04
The Defendants appearance —————	00	04	00

In which is included the Clerks Fee for the Term.

For the Oath made that } l. s. d.
the answer is true— } 00—01—00

And so for every Defendan, if they be never so many.

For a Commission to take
an answer in the Country by } 00—07—10
Dedimus Potestatem— }

Besides the ingrossing of
the Bill which is included in } 00—00—06
it, every sheet— }

For a *Subpœna* for Costs,
where the Bill is not put in
by the Complainant within } 00—02—06
the time limited— }

For a Bill of costs, and the
entry of it— } 00—02—04

For a Joynt-Commission
to examine Witnesses in the } 00—07—10
Country— }

The Plaintiff payes the
Defendant— } 00—06—08

For the examination of
every Witness here before } 00—02—06
the Examiners— }

For the Oath of every
Witness that is to be exami- } 00—01—00
ned— }

For the Copies of Depo- } l. s. d.
 sitions returnable by Com- } 00—00—08
 mission. —————

For Copies of Depositions taken in the Examiners }
 Office, for each sheet ————— } 00—01—00

For the drawing up of an }
 Order upon motion to the } 00—03—00
 Register, for the first side —————

For every other side ————— 00—01—06

For entring of the same }
 Order, every side ————— } 00—00—06

Fees of an Injunction in }
 all ————— } 01—02—06

If it be granted by the Master of the Rolls,
 then you pay two shillings more.

For a Subpœna to rejoyn ————— 00—02—06

For a Subpœna ad audien- }
 tiam Judicium ————— } 00—02—06

For a Subpœna super ordi- }
 nem to shew cause ————— } 00—07—02

For a Subpœna ducens te- }
 cum ————— } 00—07—02

For a Subpœna de executi- }
 one ordinis ————— } 01—00—00

For the Copy of Replication, Rejoinder,
 Sur-rejoinder, Rebater, and Sur-rebater, as for
 Bill and Answer.

Fees for a Decretal Or-	h	s.	d.
der drawing up, as in ano-			
ther Order; only for the	>00	—18	—06
word <i>Decree</i> you must pay			
more. —————			

For every Writ of execu-	{	00	—06	—08
tion of any Order —————				

For drawing and inrolling	{	00	—03	—04
every Decree and Dismissi-				
on respectively. —————				

For every Writ of Exe-	{	01	—06	—08
cution upon any Decree, af-				
ter the rate of every Skin —				

For writing of every She-	{	01	—02	—08
riff's Patent, Writ of Affi-				
stanc', Writ of Discharge,				
Commission to take the	{	01	—02	—08
Sheriff's Oaths, the War-				
rant of Attorney, and wri-				
ting the two Oaths, and the	{	01	—02	—08
Clerks Fee —————				

For every <i>Superfedeas</i> for	{	00	—06	—08
the discharge of any Com-				
mission, or other Writ made				
in the Six Clerks Office —				

For every <i>Superfedeas</i> of	{	00	—06	—08
Priviledg —————				

For every special <i>Certio-</i>	{	00	—06	—08
<i>rare</i> , or <i>Procedendo</i> , <i>Corpus</i>				
<i>cum causa</i> , or <i>Habeas Corpus</i> —				

For every Bail upon every Writ of *Corpus cum causa*, or nature of priviledg— } l. s. d.
00—02—09

For all manner of *Certiorare's* and *Procedendo's* of course— } 00—02—09

For every Recognizance or Bond made in Court— } 00—02—00

For every Oath before a Master— } 00—01—00

For every Report, though never so small, ten shillings, and the Clerk five shillings; and if it be longer, then more.

For filing every Affidavit— 00—00—08

For filing every Report, the like.

For the Solicitors Term-ly Fee— } 00—06—08

And for every attendance in Court on References— } 00—06—08

CHAP. VI.

By way of Advice and Corollary.

THUS have I, with brevity, plainness, and truth, run over all the most material and effectual things which are required from a Solicitor, or indeed from any belonging to the Court. I suppose I shall not need to say any thing of Solicitation in the Courts of Kings Bench and Common Pleas at *Westminster*, neither of the Exchequer-proceedings by English-Bill, they being in effect one and the same with the Chancery, only a little more chargeable. The Office of Pleas agrees with the Kings Bench; and all other Offices belonging to that Court, may rather be looked upon as pertaining to the Kings Revenue, than matter of Record between private subjects. The Hustings of *London* are of so quick dispatch, and little charge, that the very meanest persons in the City understand the practice thereof, though sometimes there are some delays put upon them by the Practisers, who keep the mystery of their dealing within their

their Walls. In short, I suppose Solicitation is either only or chiefly needful in Chancery, where always the Causes are of great weight, importance and intricacy; and not in Courts of Law, where the Attornies and their Clerks are able to manage and go through much more business then they have, their Proceedings being certain and concise, and tyed to stricter Rules, then the Chancery, being a Court of Equity, can be. But if our Solicitor will stoop to those smaller Courts, let him know, all that he hath to do there, is but to be able to breviate his Clyents Cause, fit to instruct Counsel: for in all other things he is but a Servant to the Attorney. Yet would I not have him either negligent or ignorant; but, as leisure shall serve, still to have an eye to the practice of all Courts: for by that means at one time or other he shall be enabled either to serve his Friend or Clyent. And though by practice he cannot assist, yet by his knowledge he may advise what may be the safest way to tread in. So shall he merit the praises of a knowing and industrious person; making good that of Cicero in his first Book *de Officiis*, to wit, *Nulla vita pars, neq; publicis, neq; privatis, neq; forensibus, neq; domesticis in rebus, neq; si tecum quid agas, neq; si cum altero contrahas, vacare officio potest: in*

eorum excolendo sita est vitæ honestas omnis, & in negligendo turpitude. And in another place of the same Book: Præclare scriptum est à Platone, Non nobis solum nati sumus, ortusque nostri partem patria vendicat, partem amici. Atque ut placet Stoicis, Quæ in terris gignuntur ad hominum usum empta creari, homines autem humanitatis causa esse procreatos, ut ipsi inter se alii aliis prodesse possint. In hoc Naturam debemus sequi ducem, & communes utilitates asserre in media commutatione officiorum, dando, accipiendo, tum artibus, tum op. ra, tum facultatibus devincire hominum inter homines societatem.

“It was most excellently written by the divine
 “Plato, (saith he) that we were not born
 “for our Selves only : for of our Being, our
 “Country challengeth one part, and another
 “our Friends. And, as the Stoicks said, That as
 “all things that were bred by the Earth, were
 “brought forth for the use of man : so men
 “were born for the sake of one another, that
 “one might help and be profitable one to
 “another. And herein indeed we should
 “follow our great Commandress Nature, by
 “giving and receiving, To do common good,
 “by all the Arts, Ways, Means and Endeavours
 “that they can possibly find to oblige
 “and tie men together one to another in civil
 “society, or bond of friendship. But every
 man

man is not fit for this ; *Ex quovis ligno non fit Mercurius* : therefore it is fit, that none should meddle in Affairs belonging to Law, but such as have sound discerning Judgments, and know what they go about ; lest they become not only punishable, but ridiculous. As it once happened to *Megabyzes* the Persian, a man otherwise of great Reputation and Valour, who having upon a time entred into the Lodging, where the famous Painter *Apelles* did ply and practise his Art, began to discourse touching the same ; and would needs give him to understand, that he knew the nature and secrets thereof : To who *Apelles*, as being a wise and well-conditioned man, thus answered, *Truly, Megabyzes, before I heard you speak, I held you for a discreet man ; for your silence did grace your brave apparel : but since ye have medled to talk of my Trade, trust me not, if the very smallest Boy here that brayeth the Oker, will not mock at, and flout you, for your labour. Which may teach every man to keep himself within the compass of his Calling, and not every foolish Fellow to undertake so weighty a profession as that of a good Solicitor ought to be. This was inculcated by the Poets, when they feign that their gods do content themselves each within his own Sphere ; Mars medleth with War, Minerva with Arts,*
Mercury

Mercury with Eloquence, *Cupid* with Love, *Neptune* with the Sea, *Pluto* with Hell, *Jupiter* with Heaven. Hence we may gather, That all things do not besit all men: The Horse is fit for riding and running, the Ox for labouring the Ground. Yet there are a sort of men (and I wish they were not) who without leaving any part of their idleness and vices, would be as wise as the Philosophers, that have both Night and Day studied so much. But in these, and such other Occurrences, which at the present cannot be helped, let us take occasion to be more watchful and wary, lest we become one of those that forget to carry our selves discreetly, and while we blame others, run into the same fault our selves.

An

An Appendix.

Because of those many clamours which are frequently and industriously raised against the Court, by persons, no doubt, no way concerned, and who have no occasion of such rude complaints further than to scandalize the Government; I have presumed to do the most Honourable Household the right and Justice (besides what is due to the strict commands of our Sovereign for the execution of the Laws against all persons how nearly soever attending on him) as to give an account how, and what proceedings may be had against them, without incurring any danger or trouble.

Persons that have Protections from the Law, have them either as *ex Officio*, or *ex Favo*re.

Persons

Persons by Office are such as relate by service to the King, Queen, and Royal family; all who are menial servants to Peers, and to Members of Parliament, and all Privy-Counsellors.

Persons by favour, are such as having no relation by service, are yet, out of respect, friendship or Alliance, protected by any person enabled to give a Protection; or else have a Protection-Royal.

Leave is to be gotten against Kings servants below stairs, from the Green-cloth. If they be above stairs, either from the Lord-Chamberlain or Groom of the Stool. If they be Gentlemen Pensioners, the Captain of their Band is to be Petitioned. If they be Yeomen of the Guard, from their Captain leave is to be obtained. If they be of the Life-guard, the Lord Gerard is to be sought after. If Souldiers, their several Colonels and Captains.

Where note, all these are to be sued to for leave by Petition: upon the delivery and reading whereof, the usual course is to summon the party complained against to appear and shew cause why he doth not or ought not pay the Petitioner. If he can shew no cause, leave is straight given: but if he submit, then usually the person of Honour who might give leave, moderates the matter between the Petitioner

rioner and the party complained against; and so settles some way of payment or satisfaction, either out of their Estates, Pay, Wages, or otherwise, as shall be thought most meet. To which Order of moderation, if the Debtor will not submit, the Petitioner straightway shall have leave to Arrest him; which leave is to be signified in writing under hand; and being delivered to an Officer, is a good Warrant to him to proceed against the said person according to Law.

All other Protections must be sought to be waived in like manner by Petition to the Lord, or other honourable person who gave the same.

This is not to be done without charge, though there be no certainty in the charge; but each may give or receive *ad libitum*.

Ex EHR
7/17/06

FINIS.

